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In The

# Supreme Court of the United States

October Term, 1966

No. 719

JOSEPH BRANCH, individually and as attorney for the Board of Education of Halifax County, North Carolina, and W. HENRY OVERMAN, individually and as Superintendent of Schools of Halifax County, North Carolina, and ROM PARKER, individually and as County Attorney for Halifax County, North Carolina, and L. M. WILLIAMS, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, and C. M. MOORE, JR., MRS. J. C. SHEARIN, HENRY L. HARRISON, MRS. V. I. MOHORN, SR., C. H. LEGGETT, MRS. ROBERT ROBINSON and J. D. WHITEHEAD, individually and as members of the Board of Education of Halifax County, North Carolina, and R. L. COPPAGE, PERCY F. THORNE, MRS. WILLIS M. MORRISETTE, MRS. FRANCES ARNOLD and E. W. COPELAND, individually and as members of the District School Committee of District V, Halifax County, North Carolina,

Petitioners

versus

WILLA JOHNSON, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated,

Respondent

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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Respondent

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, the appellees below, respectfully pray that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on June 6, 1966.

## CITATIONS TO OPINIONS BELOW

The Opinion of the District Court, printed in Appendix A. hereto, *infra*, p. 1a, is reported in 242 F. Supp. 721. The Opinion of the Circuit Court of Appeals (R. 52),[1] printed in Appendix B. hereto, *infra*, p. 30a, is unreported.

## JURISDICTION

The Judgment of the Circuit Court of Appeals was filed and entered on June 6, 1966 (R. 52). A timely Petition for Rehearing, filed on June 30, 1966 (R. 74), was denied on July 25, 1966 (R. 94). The jurisdiction of this Court is invoked under Title 28 U.S.C., Section 1254 (1).

## QUESTIONS PRESENTED

1. Whether the Federal Courts can compel the State of North Carolina to enter into an employment contract with a teacher under this State's present statutory system of employing teachers?

2. Whether the conflict between two Circuit Courts of Appeals as to the power of the judiciary to make contracts for parties requires resolution by this Court in the instant case?

3. Whether the conflict between two Circuit Courts of Appeals on the application of Rule 52 (a) of the Federal Rules of Civil Procedure requires resolution by this Court in the instant case?

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1. All citations designated by "R." refer to the record of Proceedings in the United States Court of Appeals which is included in the Transcript of Record.

4. Whether the Circuit Court opinion in this case contains facts and inferences of fact that are not supported by the evidence and that are grossly prejudicial to petitioners?

5. Whether a Federal Court should substitute its judgment for that of a school committee which is invested with discretion and empowered to exercise judgment in the employment of teachers within its school district?

6. Whether the complaint in this case states a claim upon which relief can be granted?

7. Whether respondent carried the burden of proof as to all of the elements necessary to sustain her cause of action?

8. Whether the District Court was limited to considering only the facts and logic relied upon by the school committee itself in testing the constitutionality of this committee's decision not to re-employ the respondent?

9. Whether there is a conflict between the decision in the instant case and the decision by the Fourth Circuit in the case of *Parker* vs. *Board of Education of Prince George's County, Maryland* that should be resolved by this Court in order to bring uniformity within the circuit?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following constitutional provisions and statutes:

1. Title 28 U.S.C. Section 1343 (3).

2. Title 42 U.S.C. Sections 1971, 1981, 1983, and 1985.

3. First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

4. Federal Rules of Civil Procedure, Title 28 U.S.C. Rule 52 (a).

5. General Statutes of North Carolina, Chapter 115, Sections 72 and 142.

The pertinent text of the above constitutional provisions and statutes is set forth in full as Appendix C., *infra*, p. 47a.

## STATEMENT OF THE CASE

This case was instituted in the United States District Court for the Eastern District of North Carolina, Wilson Division, on June 29, 1964. In the complaint filed in this action, respondent invoked the jurisdiction of the district court under the provisions of Title 28 U.S.C. 1343 (3), Title 42 U.S.C. 1971, 1981, 1983, and 1985, and under the Constitution of the United States, particularly the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments thereto. Respondent had been a teacher in the Halifax County Public School System prior to and during the 1963-1964 school year but her employment contract was not renewed upon its expiration at the end of that school year. Respondent contended, among other things, that she was not reemployed as a school teacher by the petitioners as a result of a conspiracy designed to intimidate and deter her and the members of the classes she represented in the exercise of their rights under the statutes and the Constitution of the United States as set forth in the complaint. Petitioners contended, among other things, that respondent was not reemployed because she frequently failed to abide by various school rules, regulations and policies and that, therefore, she was no longer a satisfactory and acceptable teacher. Petitioners further contended that respondent's continued employment would have been detrimental to the proper operation of T. S. Inborden High School. However, irrespective of the various contentions, petitioners submit that the following is an accurate summary of the facts that are amply supported by competent evidence:

Respondent had been in the Halifax County School System for about twelve years and, prior to the 1963-64 school year, she had been a satisfactory teacher. For

some unknown reason, she developed a negative attitude toward the principal of the school at the beginning of this school year and she started "bucking the administration". She disobeyed rules and regulations and frequently argued with the principal over school policies. The principal and the respondent had numerous conflicts during the year. Principal Williams wrote to her on March 10, 1964 and pointed out that she had failed to abide by seven rules and regulations at the school, which he enumerated. A copy of this letter was sent to the Chairman of District School Committee No. 5 and was presented to the Committee at its April meeting when all of the employment contracts were being considered. At the same meeting, they had a copy of a letter dated March 31, 1964 from the principal to the respondent whereby he was recommending her for employment the following year upon certain conditions. The Committee was concerned about the conduct and attitude of the respondent and they questioned Principal Williams closely about her deficiencies. They were not satisfied with his presentation, his statements and the answers they received and, therefore, they postponed action to give them time to consider further what appropriate action should be taken. At the May meeting, a majority of the Committee present voted not to renew the respondent's contract because of her various deficiencies. They did not know the respondent and, at that time, they did not know that she participated in any civil rights activities. They did not elect her for employment the following year because they considered her insubordinate and uncooperative and, therefore, an unsatisfactory teacher for T. S. Inborden School.

The case was first heard in the District Court on July 31, 1964 on respondent's motion for a preliminary injunction, which resulted in the entry of a consent order that respondent's job would be filled only on a temporary basis. Respondent examined certain of the petitioners under oath on August 27, 1964. Further testimony and oral arguments were received by the District Court on September 28, 1964 and

March 15, 1965. Although the testimony of the members of District School Committee No. 5 that was taken on August 27, 1964 and subsequently transcribed was already in evidence, they were put on the witness stand on March 15, 1965 for the announced purpose of allowing the Trial Judge to observe them individually for the purpose of judging their credibility (A-II, p.57).[2] It is submitted that the record clearly shows that they are people worthy of belief. The District Court filed an Opinion and Order on June 14, 1965 (A-I, p.40) in which, among other things, it found as a fact that there was a failure by respondent to show a conspiracy on the part of the petitioners when they failed to re-employ respondent for the school year 1964-1965 (A-I, p.53) and specifically that there was good cause for not re-employing the respondent under the circumstances as established by the evidence (A-I, p.54). A Judgment was filed by the District Court on June 14, 1965 dismissing the action and assessing respondent with the costs of the proceedings (A-I, p.40). Respondent filed notice of appeal to the United States Court of Appeals for the Fourth Circuit on July 14, 1965. The Fourth Circuit heard this case on April 7, 1966 (R.51). The Fourth Circuit filed its Opinion (R.52) and Judgment (R.72) on June 6, 1966 in which it reversed the Judgment of the District Court and remanded the case with instructions to the District Court to enter an order directing the School Board to renew respondent's contract for the next school year (1966-1967) and to determine her damages (R. 64). Respondents filed a Petition For Rehearing on June 30, 1966 setting out in detail what they considered to be numerous inaccuracies in the Circuit Court Opinion (R.74) but, on July 25, 1966, the Fourth Circuit entered an Order Denying Petition for Rehearing (R.94). Petitioners then filed a Petition in the Fourth Circuit on July 28, 1966 to stay mandate in this case until ninety days following July 25, 1966 in order to allow petitioners to prepare a petition for a writ of certiorari (R.96). An Order was entered by that

2. All citations designated by "A-I" refer to the appendix in respondent's brief in the Fourth Circuit and by "A-II" refer to the appendix in petitioners' brief in the Fourth Circuit, copies of which are included in the Transcript of Record.

Court on August 1, 1966 staying the issuance of a certified copy of the judgment in lieu of mandate pending application of the petitioners to the Supreme Court of the United States for a writ of certiorari, provided that the application was filed within sixty days from July 25, 1966 (R.99). Petitioners filed a Petition For Stay of Mandate For An Additional 30 Days on September 6, 1966 (R.101). The Fourth Circuit entered an Order on September 12, 1966 further staying the issuance of a certified copy of judgment in lieu of mandate, provided that the application for a writ of certiorari was filed within ninety days from July 25, 1966 (R.104).

## REASONS FOR GRANTING THE WRIT

I. THE OPINION OF THE COURT OF APPEALS FOR THE FOURTH CIRCUIT IS BASED UPON FACTS THAT ARE NOT IN EVIDENCE AND UPON INFERENCES THAT ARE NOT SUPPORTED BY THE RECORD.

The testimony in this case was lengthy and occasionally ambiguous. Therefore, in their brief below, petitioners deviated from the usual concise statement of facts and presented instead a very complete statement. This required about seventeen printed pages and included appropriate references to the printed testimony. It was felt that this would assist the Fourth Circuit in that respondent was making numerous contentions that were not supported by the record.

The Opinion of the Fourth Circuit was astounding. It recited numerous facts that appeared nowhere in the record. It inferred other facts that contradicted positive competent evidence. It disregarded the Trial Court's findings of fact wherever necessary in order to hold that respondent's contract was not renewed because of the committee members' objections to respondent's racial activities and that, therefore, this action by the Committee was arbitrary and capricious.

Petitioners promptly filed a Petition For Rehearing and it required over thirteen printed pages to set out adequately

the statements and conclusions in that Opinion that petitioners considered erroneous. The Fourth Circuit subsequently refused to rehear the case and this Opinion, unquestionably containing many inaccurate statements, still remains unchanged.

As mentioned above, there are a number of statements and conclusions in the Opinion of the Circuit Court that petitioners contend are erroneous. Although they are covered in more detail in the Petition For Rehearing that was filed in the Court below (R. 74), the following illustrate this contention and, in order to be consistent with the portions of the testimony included herein, the words "plaintiff" and "defendants" are used at this point as appropriate:

1. The Opinion of the Fourth Circuit recites a ". . . factual context . . ." (R. 64) that, although argued in part by respondent's attorneys in their brief, is found nowhere in the record. These and other recited facts therein are as follows:

A. "We, with the district court, accept the defendants' statements that they did not know of the *extent* of the plaintiff's activities for civil rights but they knew of her *attitude* towards the civil rights movement." (emphasis added) (R. 63).

It previously is stated in the Opinion that the defendants had testified or had made statements that they were not aware of the extent of the plaintiff's personal participation in these civil rights activities (R. 62). These statements imply that the defendants knew of some civil rights activities on plaintiff's part but, in fact, defendants denied any knowledge of any of her civil rights activities and the District Judge found as a fact that they did not know of her participation in any such activities (A-I, p. 51, 55). Furthermore, there is nothing in the record that supports the statement that the defendants knew of plaintiff's attitude toward the civil rights movement.

B. "Mr. Copeland, the member who moved not to renew

her contract, was a member of the Town Council which rejected an equal accommodations ordinance strenuously backed by both Mrs. Johnson and her husband several weeks before the April meeting." (R. 63).

Although it is in evidence that Mr. Copeland was a Town Commissioner, the rest of this recital is not supported anywhere in the record.

C. "Three days before the meeting, Mr. Coppage pointed out the plaintiff's husband to his fellow board member Thorne at the polling place." (R. 63).

This statement is inaccurate in that the incident referred to occurred three days *after* the meeting on May 27, 1964 (A-II, p. 83).

D. "In weighing the reasons offered by the Board to support its contention that it did not act arbitrarily, we cannot ignore the highly charged emotional background of a small eastern North Carolina community in the throes of a civil rights campaign where more than 51% of the population was Negro . . ." (R. 64).

There is no evidence that there was a highly charged emotional background or that the community was in the throes of a civil rights campaign at the time that the plaintiff's contract was voted upon. There is no evidence that 51% of the population was Negro.

E. "Present also was a member of the County School Board who had previously told Mrs. Johnson's husband that a teacher would be fired for voting activity." (R. 57).

There is no evidence in the record to support this statement.

F. "We take it to be self-evident that the objections held either by the Board or the Principal to the plaintiff's

exercise of her personal and associational liberty to express her feelings about segregation would not justify refusal to renew her contract so long as these activities did not interfere with her performance of her school work." (R. 63).

This statement implies that such objections existed. There is no evidence in the record to support this statement nor the implications contained therein.

G. "It is apparent on this record that absent the racial question, the issue would not have arisen." (R. 64).

This statement by the Fourth Circuit is unwarranted and unsupported by the evidence.

2. The Fourth Circuit's finding that ". . . the action of the school board was arbitrary and capricious." (R. 63) is not supported by the evidence.

Petitioners respectfully submit that the following statements and findings included in the Opinion of the Fourth Circuit, which undoubtedly influenced its decision, are erroneous:

A. "In their (committee members) testimony before the court they all declared that their decision was based solely on the letters." (R. 56, 57).

"The testimony of all the members of the Board was . . . that their action was based solely upon the letters of March 10th and March 31st." (R. 62).

"These (infractions enumerated in the March 10th letter) being the only basis for the school board's decision . . ." (R. 63).

There is abundant testimony throughout the record establishing that the members of District School Committee No. 5 also had before them, and gave great weight to, the prin-

cipal's appearance, statements and conduct at the initial meeting on April 23, 1964.

B. "None of the members was able to testify to any inquiry into further details made at the meeting." (R. 57).

"Furthermore, the members of the Board testified that they had not further questioned the Principal . . ." (R. 62).

The above statements are not supported by the record.

C. "We feel that the infractions enumerated in the March 10th letter were neither individually nor collectively such as to justify failure to renew the contract of a teacher with the plaintiff's record of twelve years." (R. 63).

The record shows that these infractions were not the only factors considered by District School Committee No. 5 when it made its decision not to rehire the plaintiff.

D. ". . . the district court in its comments appeared to agree, that these infractions individually and collectively were not in themselves justification for failure to re-employ the plaintiff." (R. 55).

It is contended that this statement is not supported by the record.

E. "But that these disagreements had been satisfactorily settled by March 31st in such a manner as not to interfere with her school work was shown both by the Principal's letter of that date and by his testimony. He testified that the plaintiff had improved in her attitude toward him . . ." (R. 62).

"Thus there is no support in the record for the court's finding . . . that the Principal and the plaintiff had not

reached a satisfactory understanding of their differences." (R. 62, 63).

These statements are not supported by the record.

3. Petitioners respectfully submit that the Fourth Circuit's Opinion as it relates to the District Court's Judgment is erroneous in the following particulars:

A. "The district court, after reviewing the record, found that '. . . there was good cause for not re-employing the plaintiff under the circumstances as established by the evidence' because of the 'plaintiff's inability to perform those extra-curricular duties required of her promptly and in a cooperative manner' . . ." (R. 57).

The Fourth Circuit here combined two separate findings of fact (A-I, p. 54) and defendants contend that this statement by that Court is inaccurate.

B. "While there is some ambiguity in the court's findings and conclusions, we think it a fair summary to say that the court found that the plaintiff's civil rights activities consumed so much of her time and interest that they interfered with her 'extracurricular' activities at the school; created some dissension between her and the Principal, and caused the Board's refusal to renew her contract." (R. 61).

Defendants respectfully submit that, in fact, this is not a "fair summary" of the District Court's findings.

C. "Thus there is no support in the record for the court's finding that the extent of the plaintiff's activities interfered with her school work . . ." (R. 62, 63).

It is submitted that the Trial Court's findings in this connection (A-I, p. 54) were accurate, consistent and supported by the evidence.

D. "The district court did not seek to rely on these infractions to support the dismissal." (R. 63).

It is submitted that this statement is in error. To begin with, this was not a dismissal. Furthermore, the District Court, after specifically finding that there was good cause for not re-employing the plaintiff *under the circumstances established by the evidence,* continues at that point with the following sentences:

> "Plaintiff failed to observe the school rules as interpreted by her immediate supervisor and as published in the Teacher's Handbook. The rules and the interpretation of them was in no way unreasonable nor discriminatory, and it is not contended that they were." (A-I, p. 54).

In addition, the Trial Court made other findings that indicated its reliance upon these infractions to support the action of District School Committee No. 5. (A-I, p. 51, 55).

The petitioners want to make their position clear. They have tried from the beginning of this case to get the complete *facts* into the evidence. The members of District School Committee No. 5 took the witness stand for the announced purpose of allowing the Trial Judge to observe and question them in order to evaluate their testimony. The petitioners subsequently invited the Fourth Circuit's attention to the numerous errors contained in its Opinion in order to clarify the record but that Court refused to rehear the matter. The petitioners are unaware of any further procedural steps that could have been taken by them in order to accurately present the facts to this Court. Therefore, they have no other remedy but to earnestly request this Court to grant this petition in order to review the Opinion of the Fourth Circuit that undoubtedly contains numerous prejudicial errors.

The petitioners are asking no more, but no less, than to have this case decided, and the respective rights of the parties determined, *on the facts established by the evidence.* They respectfully submit that the Fourth Circuit's flagrant disregard of these facts calls for the exercise of this Court's power of supervision.

## II. THE STATE OF NORTH CAROLINA NEEDS TO KNOW WHETHER ITS STATUTORY SYSTEM FOR THE EMPLOYMENT OF TEACHERS IN THE PUBLIC SCHOOL SYSTEM IS VALID.

The State of North Carolina operates one-hundred sixty-nine school administrative units which are under the administration of county and city boards of education. There is a statutory system for the employment of all employees of the public school system, including teachers. The pertinent North Carolina statutes on this subject are G.S. 115-72 and G.S. 115-142, which are appended (Appendix C., p. 51a).

North Carolina does not have either by statute or by regulation any tenure system for public school teachers. Public school teachers in North Carolina are employed by written contracts for the academic or school year. These are not continuing contracts and they expire at the end of the contract period. The employing authorities do not have to renew the contract. They are not required by law to re-employ a teacher for another year. Teachers may be employed or re-employed according to the judgment and discretion of the employing authorities. There are no conditions or vested rights in regard to employment or re-employment of public school teachers.

It is important for the State of North Carolina to know whether it has a legal and constitutional right to enter into contracts according to this statutory plan or whether, after the contract has expired and terminated, the Federal Courts can compel the boards of education to enter into contracts of re-employment of teachers irrespective of their wishes or independent judgment. The Court will see that this question reaches into the whole contractual system of the public schools of the State of North Carolina.

## III. THE FOURTH CIRCUIT AND THE FIFTH CIRCUIT HAVE REACHED CONFLICTING DECISIONS AS TO THE POWER OF THE JUDICIARY TO MAKE CONTRACTS FOR PARTIES.

The case of *Henry* v. *Coahoma County Board of Education*, 353 F. 2d 648 (5th Cir. 1965), recently decided by the Fifth Circuit, is factually very similar to the instant case. Plaintiff and her husband were both Negroes. She had taught in the same school for eleven years, but her employment contract was not renewed for the school year 1962-1963. Plaintiff sued the County Superintendent of Education and the Board of Education, Coahoma County, Mississippi, alleging that the Board had failed to rehire her as a school teacher for the school year 1962-1963 because she and her husband engaged in certain civil rights activities with goals and objectives contrary to the policy and views of defendants. In the State of Mississippi, teachers have no tenure, but are hired on one year contracts which are reviewed for renewal each year. The required statutory procedure in that State is for the teacher's principal or supervisor to make his recommendation for renewal to the county school superintendent, and the superintendent in turn makes his recommendation to the school board. By statute, a school board cannot hire anyone not recommended by the county school superintendent. Although plaintiff was recommended by her supervisors to the county school superintendent, the superintendent did not recommend her and her contract was not renewed for the 1962-1963 school year.

The District Court, in its opinion, reported at 246 F. Supp. 517, determined that the plaintiff was entitled to no relief, which decision was affirmed by the United States Court of Appeals for the Fifth Circuit (353 F. 2d 648), which said at page 650:

> "The district judge filed a full opinion, stating the facts and issues and the reasons and grounds for his findings, decision and judgment.
>
> "We agree with his decision and judgment and adopt his opinion as our own, and, because we do, it will be unnecessary for us to repeat or discuss further his findings and conclusions. It will be sufficient for us to say that we approve and adopt his opinion and the findings

and conclusions stated in it and order the judgment affirmed."

In addition to finding that plaintiff had failed to sustain her burden of proof that the refusal to renew her contract was due to her civil rights activities, the District Court in the case of *Henry* v. *Coahoma County Board of Education, supra,* made these significant statements at page 521:

> "It also must be borne in mind that plaintiff had a one year contract for the school year 1961-1962, that this contract was fully performed by the parties thereto, that it ran its course and expired. That contract is not and could not be in this case. By its terms and under the statutes no rights survived its expiration to any of the contracting parties. Defendants could not have required plaintiff to accept another contract, nor can plaintiff now require that she be given a new contract. The fact that she had been employed as a teacher for one year (or for more than one year) gave her no rights to re-employment for the school year 1962-1963, or for any other year. Whether she would or would not be employed for another year depended entirely on whether she would or would not be recommended by the superintendent. He did not recommend her. That ends the matter." . . .
>
> *"It also needs remembering that it is not now nor has it ever been within the purview of judicial power to make contracts for parties."* (emphasis added).

As stated previously, North Carolina does not have, either by statute or by regulation, a tenure system for public school teachers. A teacher in this State is employed under a written contract for the school year. These are not continuing contracts and they expire at the end of the contract period, which is either the next succeeding school year or the unexpired part of the current school year. In this State, the statutes dealing with the employment of teachers are G.S. 115-72 and G.S. 115-142, which are appended (Appendix C., page 51a). The statutory procedure is for the principal of a district to nominate and the district committee to elect teach-

ers for all of the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. If the principal and the district committee are unable to agree upon the nomination and election of teachers, the county board of education has the authority to select the teachers. However, in every case, the contract must be approved and signed by the county board of education.

Assuming that the nomination of respondent by Principal Williams was an unqualified one, District School Committee No. 5 did not elect the respondent. Therefore, since Principal Williams subsequently did not "disagree" with the Committee (A-II, p. 78, 79), the County Board of Education could not have approved of and have executed a new contract for respondent. Nevertheless, the Fourth Circuit has assumed the authority of writing respondent a new employment contract by instructing the District Court ". . . to enter an order directing the Board to renew her contract for the next school year (1966-1967) . . ." (R. 64).

Petitioners respectfully submit that the Fourth Circuit exceeded its authority in the instant case by ordering them to enter into an employment contract with respondent. In any event, since it is one of the duties of this Court to resolve serious conflicts between two Circuit Courts of Appeals, it further is respectfully submitted that this Court should review the case at bar for this purpose.

## IV. IN APPLYING RULE 52 (a) OF THE FEDERAL RULES OF CIVIL PROCEDURE:

### A. THE FOURTH CIRCUIT AND THE FIFTH CIRCUIT HAVE REACHED CONFLICTING DECISIONS.

### B. THE FOURTH CIRCUIT DECISION IN THE INSTANT CASE IS IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

Rule 52 (a) of the Federal Rules of Civil Procedure contains the following provision:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

In the case at bar, all members of District School Committee No. 5 took the witness stand for the announced purpose of allowing the Trial Judge to observe them as witnesses. At this time, they were examined, cross-examined and occasionally questioned by the Trial Court. The Trial Judge had the opportunity to observe them while hearing their testimony. Their oral testimony before him, together with that of respondent and that of Principal Williams, required over two-hundred typewritten pages to transcribe. This is very significant in considering the following finding of fact by the District Court:

> "The Court specifically finds that there was good cause for not re-employing the plaintiff under the circumstances as established by the evidence." (A-I, p. 54).

The record will support that the Trial Court was, in fact, very liberal in admitting evidence and permitting testimony when its relevancy was in serious doubt. It undoubtedly did search the record for evidence that would lead to an inference that petitioners' actions were arbitrary and based on race. However, after doing so, the Trial Court found that the inferences weighed heavily to the contrary (A-I, p. 55). It is respectfully submitted that no appellate court can put itself in as favorable position as the Trial Court in determining the true facts in this case under the above circumstances. Therefore, the Fourth Circuit was in error in disregarding the Trial Judge's findings of fact which, as the record will show, were amply supported by competent evidence.

The case of *United States of America* v. *Board of Education of Greene County, Mississippi,* 332 F. 2d 40 (5th Cir. 1964), is a case that also is factually very similar to the present case. Plaintiff was a Negro teacher employed to teach for the 1961-1962 school year. Her contract contained no clause of

renewal. During the school year, she had an uncooperative attitude toward the Principal and Assistant Principal. She furthermore was involved in a registration suit at the end of that school year. Her principal recommended her for re-employment but the superintendent refused to accept this recommendation. Plaintiff sued the Board of Education under 42 U.S.C.A. 1971 (b) which provides that "No person, . . . shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such other person to vote . . .". The alleged act of intimidation was the refusal of the school board to rehire the teacher at the expiration of her contract. The superintendent testified that the fact that plaintiff was involved in litigation might have had some influence on his decision not to recommend her for further employment, but that other reasons prompted his refusal to recommend her to the Board, such as her uncooperative attitude at the school. He categorically denied that his refusal to recommend re-employment was motivated by any civil rights activities, and asserted that such refusal was not designed to intimidate, threaten, coerce or otherwise influence the plaintiff or other Negro teachers against registering to vote, or voting. Since the superintendent made no recommendation to the Board, the matter of rehiring was never considered or acted upon by it. The Trial Court concluded that none of the defendants ever did anything in violation of the civil rights of plaintiff or any other Negro and that the plaintiff had failed in her proof. The Circuit Court of Appeals affirmed the lower court, saying at page 46:

> "Judged by the standards herein outlined, we cannot conclude that the findings of fact by the Trial Court are clearly erroneous, but on the contrary, we are firmly convinced that such findings are amply supported by substantial evidence."

In discussing the clearly erroneous rule in the case of *United States of America* v. *Board of Education of Greene County, Mississippi, supra,* the Circuit Court further stated, beginning on page 44:

"The clearly erroneous rule is so well established in federal jurisprudence that citation of authority is unnecessary. We are bound by Rule 52 (a), Fed. R. Civ. P. On appeal our decision is not reached by weighing the evidence to determine on which side of the lawsuit there is a preponderance of evidence. The fact that 'intent' or 'purpose' was an issue in the Trial Court does not change the rule. The determination of design, motive, purpose, or intent is also dependent upon the testimony produced at the trial, and the credit which the trier of the facts gives to the witnesses who appear and testify *ore tenus* before the Court. Findings as to intent, motive, purpose, or design are not to be tried *de novo*, but such findings are to be reviewed by the same standards applied in reviewing other facts. The rule is clearly stated in *United States* v. *Yellow Cab Company*, 338 U.S. 338, 94 L.Ed. 150 (1949), wherein the same contention was made by the Government. The contention was emphatically rejected.

> 'What the Government asks, in effect, is that we try the case de novo on the record, reject nearly all of the findings of the trial court, and substitute contrary findings of our own. Specifications of error which are fundamental to its case ask us to reweigh the evidence concerned with imponderables, such as the intent of parties to certain 1929 business transactions, whether corporate officers were then acting in personal or official capacities, what was the design and purpose and intent of those who carried out twenty-year-old transactions, and whether they had legitimate business motives or were intending to restrain trade of their competitors in car manufacture, such as General Motors, Ford, Chrysler and Packard.
>
> 'These were the chief fact issues in a trial of three weeks' duration. The Government relied in large part on inferences from its 485 exhibits, introduced by nine witneses. The defendants relied heavily on oral testimony to contradict those inferences.'

* * * *

'Findings as to the design, motive and intent with which men act depend peculiarly upon the credit given to witnesses by those who see and hear them. If defendants' witnesses spoke the truth, the findings are admittedly justified. The trial court listened to and observed the officers who had made the records from which the Government would draw an inference of guilt and concluded that they bear a different meaning from that for which the Government contends.

'It ought to be unnecessary to say that Rule 52 applies to appeals by the Government as well as to those by other litigants. There is no exception which permits it, even in an antitrust case, to come to this Court for what virtually amounts to a trial de novo on the record of such findings as intent, motive and design.'"

"To the same effect are recent rulings by this Court. *Galena Oaks Corporation* v. *Scofield,* (5th Cir. 1954) 218 F. 2d 217; *Smith* v. *United States,* (5th Cir. 1961) 287 F. 2d 299; *Modern Farm Service, Inc.* v. *Ben Pearson, Inc.,* (5th Cir. 1962) 308 F. 2d 18. The Supreme Court elaborated upon the reasons for the rule in *United States* v. *Oregon State Medical Society,* 343 U.S. 326, 96 L.Ed. 978 (1951):

'As was aptly stated by the New York Court of Appeals, although in a case of a rather different substantive nature: 'Face to face with living witnesses the original trier of the facts holds a position of advantage from which appellate judges are excluded. In doubtful cases the exercise of his power of observation often proves the most accurate method of ascertaining the truth. . . . How can we say the judge is wrong? We never saw the witnesses. . . . To the sophistication and sagacity of the trial judge the law confides the duty of appraisal.' *Boyd* v. *Boyd,* 252 NY 422, 429, 169 NE 632, 634.'"

The Trial Court in the *Greene County* case also had con-

sidered that plaintiff had no vested right to a new contract and had concluded that the granting of the relief sought would be ". . . to make a contract and then enforce it." However, the Fifth Circuit pointed out that, in view of its conclusions, it did not reach this point.

It is submitted that the decision of the Fourth Circuit in the instant case conflicts with the applicable decisions of this Court as cited in *United States of America* v. *Board of Education of Greene County, Mississippi, supra.* In addition, this represents a serious conflict between two Circuit Courts that should be resolved by this Court.

## V. THE OPINION OF THE FOURTH CIRCUIT IN THE INSTANT CASE CONFLICTS WITH A PRIOR DECISION OF THAT COURT AND RESULTS IN UNCERTAINTY IN THIS CIRCUIT.

The case of *PARKER* v. *BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, MARYLAND,* 348 F. 2d 464 (4th Cir. 1965), involved a plaintiff who had been a teacher under contract with the Board of Education of Prince George's County, Maryland. By the terms of the contract, plaintiff was provisionally employed and wholly without academic tenure, express or implied. The agreement was that his engagement was simply probationary and "that either of the parties to this contract may terminate it at the end of the first or second school year by giving thirty days' notice in writing to the other during the month of June or July." It was admitted that the termination by defendant complied with this stipulation. However, plaintiff contended that his contract was not renewed because of complaints that were made relating to his assignment of a certain book to his class, thereby violating claimed constitutional rights. The District Court held for defendant Board and the Fourth Circuit affirmed the judgment upon the grounds that the complaint failed to state a claim upon which relief could be granted, citing Rule 12 (b) (6) of the Federal Rules of Civil Procedure. In so doing, the Fourth Circuit stated that its decision *rested entirely upon the contract.*

In the present case, respondent was employed under a written contract for the 1963-1964 school year. Following this agreement, she worked as a teacher for the entire school year and her employers, the petitioners herein, fully complied with their contractual obligations. By its terms, her employment contract expired at the end of the 1963-1964 school year. There was no renewal provision in the contract because none of the parties thereto intended to have such a provision included. Respondent voluntarily entered into this employment contract. It was written in clear language and she fully understood its provisions. Therefore, in effect, respondent has asked the court to write her a new contract that was different from that contemplated by any of the parties. If the court did so, she further requested that it then enforce this new contract for her. The first defense pleaded in Defendants' Answer was that this action should be dismissed since the complaint failed to state a claim upon which relief could be granted. It is submitted that the case of *Parker* v. *Board of Education of Prince George's County, Maryland, supra,* should have been controlling on that point. Both of the above decisions still stand and, as they are in conflict, this has and will continue to result in confusion and uncertainity.

This is another distinct departure by the Fourth Circuit from the accepted and usual course of judicial proceedings that calls for an exercise of this Court's power of supervision.

VI. THE FOURTH CIRCUIT ERRED IN LIMITING THE DISTRICT COURT TO THE FACTS AND LOGIC RELIED UPON BY THE SCHOOL BOARD.

The Fourth Circuit stated the following in its Opinion:

> "In testing the decision of the school board the district court must consider only the facts and logic relied upon by the board itself. . . . the district court may not usurp the discretionary power of the school board but must judge the constitutionality of its action on the basis of the facts which were before the Board and on its logic." (R. 61, 62).

If it be conceded solely for the purpose of argument that District School Committee No. 5 was not aware of all of respondent's transgressions at the time it decided not to renew her contract, is the majority of the Fourth Circuit correct in limiting the District Court to only the facts known to the Committee at the time of is decision? The Fourth Circuit would allow respondent to exhibit her qualifications on the one hand and yet would so restrict the Trial Court in its consideration and evaluation of her performance as a teacher during the 1963-1964 school year. In so doing, the Circuit Court would require petitioners to re-employ respondent as a teacher and would assess them with damages when, as petitioners contend, the record clearly shows that respondent was an unsatisfactory teacher by any standard during her last year at T. S. Inborden High School.

This is in fact a general equity suit seeking to redress alleged deprivation of civil rights. The relief sought is:

(1) An injunction against interference with the plaintiff and her class in the exercise of their rights under the statutes and the Constitution of the United States;

(2) A mandatory injunction requiring defendants to renew plaintiff's employment contract as an English teacher at T. S. Inborden High School, Enfield, North Carolina;

(3) An injunction against the failure to renew the employment contract of plaintiff and her class because of the exercise by them of their rights under the statutes and Constitution of the United States;

(4) Recovery of both special and exemplary damages; and

(5) The award of reasonable counsel fees.

As stated by Judge Albert V. Bryan in his dissenting opinion filed in this case:

"While the complaint pleaded an attack upon a State

> administrative decision, it was not an 'appeal' from it. Indeed, to repeat, the complaint does not purport to be confined to a 'review' of the decision. In these circumstances, *Burford* v. *Sun Oil Co.*, 319 U. S. 315, 317 (1943) explained that such a case is 'a simple proceeding in equity'. See, too, *Chicago, R.I. & P. R.R.* v. *Stude*, 346 U. S. 574, 581 (1954)." (R. 66).

In this case, petitioners contend that the District Court had both the right and the duty to consider all of the facts in evidence in testing the decision of District School Committee No. 5. Courts enforcing equitable remedies seek to grant remedial relief where justice or good conscience requires it. In addition, the maxim that "he who comes into equity must come with clean hands" contains a principle that is recognized as a fundamental of equity jurisprudence.

This error, which was prejudicial to petitioners, constitutes another important reason for reviewing the decision of the Fourth Circuit.

## CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

Julian R. Allsbrook
Richard B. Allsbrook

Kidd Building
Roanoke Rapids, North Carolina 27870

*Attorneys for Petitioners*

# Appendix A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

NO. 884 — CIVIL

| | |
|---|---|
| WILLA JOHNSON, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated, Plaintiffs | OPINION and ORDER |
| —v— | |
| JOSEPH BRANCH, individually and as attorney for the Board of Education of Halifax County, North Carolina, and H. HENRY OVERMAN, individually and as Superintendent of Schools of Halifax County, North Carolina, and ROM PARKER, individually and as County Attorney for Halifax County, North Carolina, and L. M. WILLIAMS, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, and C. M. MOORE, JR., MRS. J. C. SHEARIN, HENRY L. HARRISON, MRS. V. I. MOHORN, SR., C. H. LEGGETT, MRS. ROBERT ROBINSON and J. D. WHITEHEAD, individually and as members of the Board of Education of Halifax County, North Carolina and R. L. COPPAGE, PERCY F. THORN, MRS. WILLIS M. MORISETTE, MRS. FRANCES ARNOLD and E. W. COPELAND, individually and as members of | |

the District School Committee of District :
V, Halifax County, North Carolina :
Defendants :
:
LARKINS, DISTRICT JUDGE: :

SUMMARY

This cause comes before the Court as a class action in equity. The plaintiff, who is a negro school teacher, seeks injunctive relief as well as damages and attorney's fees. Jurisdiction is asserted to be under Title 28 U.S.C.A., Section 1343 (3); Title 42 U.S.C.A., Sections 1971, 1981, 1983, and 1985; and the Constitution of the United States; more particularly, the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

The plaintiff seeks to have the defendants, and all others acting in concert with them, restrained from acting and conspiring in any manner designed to intimidate, deter and harass plaintiff and members of her class whom she allegedly represents, from exercising their civil rights guaranteed to them under the Constitution of the United States.

The plaintiff is a member of the negro race and was a teacher in the public school system of Halifax County, North Carolina. She has participated in various activities which are frequently labeled, for lack of a better term, "civil rights activities" in Halifax County during the years 1963 and 1964. After the close of the 1963-1964 school year, she received information that her employment contract as a teacher was not renewed for the school year 1964-1965.

Plaintiff alleges that the failure to renew her teacher's contract was the result of a conspiracy by defendants to harass her and members of her class, and that no legal cause exists for the decision not to renew her contract. For this reason, plaintiff seeks the equitable relief previously stated, counsel fees and special and exemplary damages.

The defendants have answered and filed numerous mo-

tions including a motion to dismiss for failure to state a claim upon which relief can be granted, and a motion for summary judgment.

Hearings have been held wherein the testimony of plaintiff and the principal defendants has been heard on three separate occasions: July 31, 1964, at the Craven County Courthouse, New Bern, North Carolina; September 28, 1964, at the same location; and on March 15, 1965 at the Federal Court in New Bern.

This Court was not called upon to pass upon the question of issuing a temporary restraining order so as to preserve the teaching position plaintiff claims, until this matter could be disposed of on the merits, because the parties entered in an agreement whereby plaintiff's teaching position has been filled by a temporary appointment only.

Defendant Joseph Branch has been dismissed as a party on March 15, 1965 by agreement of the parties.

Before the Court at this time, after having been presented with affidavits, depositions and exhibits, after hearing testimony and oral arguments, and after examining written arguments and briefs, are the questions of plaintiff's prayer for a permanent mandatory injunction (designated a restraining order by the plaintiff), damages and attorney's fees. Also before the Court are defendants' motions to dismiss and motion for summary judgment.

## FINDINGS OF FACT

At the outset it is necessary to determine the plaintiff's status within the public school system. In this respect, the Court looks to her employment contracts[1] and the appro-

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[1]See Appendix A. for plaintiff's contract for the year 1963-1964, and proposed contract for the year 1964-1965.

priate North Carolina General Statutes.[2]

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[2]North Carolina General Statutes, Chapter 115, and more specifically the following sections:

Section 115-32. *"Power to subpoena and to punish for contempt.*—County and city boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas may be issued in any and all matters which may lawfully come within the powers of a board and which, in the discretion of the board, requires investigation; and it shall be the duty of the sheriff or any process serving officer to serve such subpoenas upon payment of their lawful fees.

County and city boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business.

Section 115-34. *"Appeals to board of education and to superior court.*—An appeal shall lie from the decision of all school personnel to the appropriate county or city board of education. In all such appeals it shall be the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

An appeal shall lie from the decision of a county or city board of education to the superior court of the State in any action of a county or city board of education affecting one's character or right to teach.

Section 115-72. *"How to employ principals, teachers, janitors and maids.*—The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of the district shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. . . . No election of a principal or teacher, . . . , shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under eighteen years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and county superin-

tendent are unable to agree upon the nomination and election of a principal or the principal and the district committee are unable to agree upon the nomination and election of teachers . . ., the county board of education shall select the principal and teachers . . ., which selection and appointment shall be final.

Section 115-142. *"Contracts of principals and teachers terminated at end of 1954-1955 term; employment thereafter.*—(a) The contracts of all principals and teachers now employed in the public schools of North Carolina are hereby terminated as of the end of the school term 1954-1955. County and city superintendents shall give each principal and teacher notice by mail of the termination of his contract, . . . .

(b) Any teacher or principal desiring election as teacher or principal in a particular administrative unit shall file his or her application in writing with the county or city superintendent of such unit. The application shall state the name and number of the certificate held, when the certificate expires, experience in teaching, if any, and the administrative unit in which the applicant last taught. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers and principals before any salary vouchers shall be paid. The contracts of teachers and principals shall be made for the next succeeding school year or for the unexpired part of a current school year. No county or city board of education shall enter into a contract for the employment of more teachers, including vocational teachers, than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such teachers from local funds. All contracts shall be subject to the condition that when the position for which any principal or teacher is employed is terminated the contract is likewise terminated.

Section 115-145. *"Removal of principals and teachers.*—The county and city boards of education and district committees, with the approval of the superintendent, may dismiss a principal or teacher for immoral or disreputable conduct or for failure to comply with the provisions of the contract. The superintendent of schools, with the approval of the committee or the board of education, has authority and it is his duty to dismiss a principal or teacher who has proven himself incompetent, or who wilfully refuses to discharge the duties of a public school principal or teacher, or who may be per-

The State of North Carolina has its own public school system which exists under the Constitution of the State of North Carolina[3] and the statutes of the state.[4] Section 115-142 of the North Carolina General Statutes provides no tenure system for public school teachers. Teachers in the public schools are employed under written contracts for the school academic year and these are not continuing contracts; they expire at the end of the contract period and the employing board of education or district committee does not have to renew the contract.

The plan adopted by the State of North Carolina gives the various school committees, superintendents of county and city schools, and the boards of education of county and city administrative units the power to employ or not to employ public school teachers as they see fit, and for any reasons or motives which in their discretion may seem proper, so long as they remain within reasonable constitutional bounds.

There are no vested rights in regard to re-employment of public school teachers. As the statutes clearly indicate, the right to be employed or re-employed for another school year is to be distinguished from the problem of dismissal of a teacher for cause. The problem of a dismissal is not now before the Court.

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sistently neglectful of such duties. However, no principal or teacher shall be dismissed until charges have been filed in writing in the office of the superintendent and such principal or teacher given at least five days notice in which he shall have the opportunity to appear before the board of education or district committee before whom the matter is being investigated. After a full and fair hearing the action of the board of education or the committee shall be final: Provided, the principal or teacher shall have the right to appeal to the county board of education if the action was taken by a district committee, and thereafter to the courts, . . . . .

* * * * "

[3]North Carolina Constitution, Art. 1, Sec. 27, Art. IX, Sec. 1-11.

[4]Chapter 115 of the General Statutes of North Carolina, and those more specifically set out in footnote 2, supra.

Prior to the school year 1963-1964, plaintiff established a record as a teacher that would compare favorably with most teachers. This fact was clearly established by the testimony of a Mr. Phillip Constan. According to his testimony, plaintiff was a highly qualified teacher and after the recommendation of her principal was given there were no sufficient grounds not to re-hire the plaintiff.[5]

Plaintiff testified, and defendant Williams, the principal of the High School where plaintiff was employed as a teacher also testified, that there was no problem until the school year 1963-1964. Prior to that time the only problems were over minor details and their relationship was in no way strained.

Plaintiff had taught for a period of twelve years, ten of these at Inborden High School, the school of plaintiff's last employment. During that time plaintiff was the sponsor of the Inborden High School National Honor Society and the Student Council. She also sponsored the school paper, aided in the preparation of one of the editions of the Teacher's Handbook, and chaired at least two county wide committees relating to the teaching profession and the administration of schools. It can readily be seen that plaintiff was a diligent and dedicated teacher, and was fully engrossed in family and professional affairs.

In respect to her family, plaintiff is the mother of one child, and was forced to remain absent from teaching for a short period while she gave birth to her child. It was not long before she returned to teaching, however.

As a classroom teacher, during the entire twelve years of

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[5]Mr. Constan was a teacher with fifteen years classroom experience, and he is now a principal of a school in Cape Canaveral, Florida. He was also a member of a panel of experts and members of the National Education Association which interrogated the plaintiff for some three to four hours in Washington, D. C. in order to determine the competency of plaintiff as a teacher according to the standards of the NEA.

plaintiff's career, there can be no doubt that she was beloved by her students and highly respected by her fellow teachers. Other teachers who have worked with plaintiff have submitted affidavits acknowledging her learning, preparation and helpfulness. Former students have likewise submitted affidavits, and they all testify to plaintiff's competency and dedication.

It is in evidence that plaintiff was a diligent member of the Parent-Teachers' Association, having been the treasurer of the Inborden School section for two years. Most of plaintiff's interests were directed toward her family and profession. It is clear that she could have done very little else for either, or for any other outside interests, when one considers her teaching and family commitments.

During the most part of this twelve year span, plaintiff's relations with her superiors was good. It is in evidence that principal Williams requested her return to a position at Inborden High School after she had taken leave for purposes of having her baby.

In April 1963, plaintiff began actively participating in a negro voters registration movement in Halifax County and in the City of Enfield, North Carolina. Her contract was renewed, however, for the following school year, 1963-1964. The renewal may not be of any significance, however, when it is realized the contract was probably considered at about the same time her civil rights activities began.

The period between April 1963 and November 1964 was the period of plaintiff's most active participation in the drive to register negro voters. There is no substantial evidence that plaintiff was a militant or acknowledged leader or participant in the movement.

It was in the fall of 1963, and at the commencement of the school year 1963-1964, that plaintiff testifies to a noticeable change in the attitude of principal Williams toward her.

One bone of contention which quickly appeared was the

controversial "English 12 Project." Plaintiff sought to have speakers attend her senior students' English Class, and to have them speak to the class. At least one of these speakers to be invited, and probably more, was a local leader in the negro movement. All such projects require the approval of the principal, and principal Williams would not approve this particular project although he had never disapproved a project request of plaintiff prior to this request.

On another occasion, plaintiff discussed the negro movement with some twelve of her students. Shortly thereafter, they conducted a "demonstration" at the local Enfield public library. Plaintiff insists that she did not instigate this conduct on the part of her students, but she admits encouraging the students in their activities. She also met with them at her home the night following the demonstration, and she testified that they were delighted in their endeavors and confessed their feelings of elations with her and that she was part of the discussion.

These students were called to principal Williams' office the following day and were admonished by him not to participate in such activities again until they had designated one of their number as spokesman and leader. The students told plaintiff of this admonition of principal Williams, and she testified that she considered it a reprimand.

Plaintiff stated that P.T.A. meetings were used as platforms to urge the members of the negro community of Halifax County to register and vote. Both plaintiff and principal Williams were regular in their attendance at P.T.A. meetings.

During this school year 1963-1964, plaintiff often seized opportunities to advance the cause of the negro movement. It is obvious that she was willing to encourage the use of the public school, and the students who so devoutly admired her, in the furtherance of the negro voter registration drive. It is also obvious that principal Williams did not wish to see the school which he administered embroiled in the turmoil of a civil rights dispute.

While plaintiff was attempting to use the school in this way, principal Williams was noting a definite change in her personality and conduct. He noted violations of standards of teacher conduct which he testified were almost daily in frequency. He admonished her directly by conferences with her, and indirectly by calling various regulations and statements in the Teacher's Handbook to her attention.

Plaintiff finally came to believe that every admonition given at a teachers' meeting was directly aimed at her alone. She then ceased to approach principal Williams on school projects, but would send one of her students to him in her stead.

Defendant Williams, in turn, noted more violations and found that she tried to circumvent regulations rather than obey his instructions; she tended to quibble with him about their interpretation. This becomes especially apparent on the question of lateness at the opening of the school day.

Plaintiff insisted that she did not have to be in her room at 8:00 A.M., but only at the "sign in" registry. Principal Williams felt otherwise and instructed plaintiff accordingly. A clash over this matter resulted.

It further developed that plaintiff would make false entries on the "sign in" register in order to avoid the appearance of being at school later than 8:00 A.M.

As the school year progressed, a definite personality clash developed. It reached such proportions that principal Williams, on March 10, 1964, felt compelled to send a letter of criticism to plaintiff.[6] The import of this letter of March 10,

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[6]Letter dated March 10, 1964, from L. M. Williams, Principal, T. S. Inborden High School, Enfield, North Carolina, to Mrs. Willa C. Johnson, T. S. Inborden High School, Enfield, North Carolina, with carbon copies to W. Henry Overman and R. L. Coppage, as follows:

"Dear Mrs. Johnson:

1964 is realized when principal Williams observed that in every other case involving the sending of such a letter as this, the recipient resigned from the teaching position at the end of the school year.

Plaintiff, however, decided to seek re-election to a teaching position at Inborden School, in spite of the feelings between her and principal Williams.

This letter of March 10, 1964 specified seven items about which principal Williams was complaining. He testified, however, that they in no way indicated the frequency of plaintiff's violations of school regulations. Plaintiff's testimony confirms the fact there were indeed many clashes over violations and that they occurred with a greater frequency than indicated by this letter of March 10, 1964.

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This is to inform and advise you that you are expected to abide by and adhere to the policies and regulations that govern the operation of the school just as any other teacher is expected to do.

I have reminded you of the following:

1. Being late for game duty December 2, 1964.
2. Failing to report to work on time and a conference was was held with you January 6, 1964 regarding being late for work.
3. Failing to do ground duty the week of February 3-7, 1964.
4. Failing to give a written explanation as requested for not attending a P.T.A. meeting on February 5, 1964.
5. Failing to do building duty the week of March 2-6, 1964.
6. Failing to stand at your door to supervise pupils as they change classes.
7. Failing to see that the cabinets in your room were clean and free of fire hazard.

A copy of this information is being submitted to the superintendent for his suggestions or recommendations regarding this matter.

Yours respectfully,"

A copy of this letter was brought to the attention of defendant Henry Overman, Superintendent of Schools of Halifax County. It was also brought to the attention of the members of District Committee No. Five.

At this point in the development of the situation which brought on this action, a series of circumstances occurred which are of particular significance.

In early April 1964, on the evening of either the eighth or the ninth, the monthly Inborden School P.T.A. meeting was held. This meeting was attended by both the plaintiff and principal Williams. Plaintiff was now seriously concerned about losing her teaching position and had expressed this concern to the leaders of the negro voters registration movement. These leaders addressed the P.T.A. on this April night.

A Mr. John Salter, a spokesman for the voters registration drive, publicly stated at this P.T.A. meeting that if any person lost his position of employment for participating in the movement, then a very aggressive law suit would ensue. These remarks were made with specific reference to teachers. Plaintiff, in an affidavit, then stated that this announcement seemed to greatly distress principal Williams.

On the following day plaintiff was summoned to principal Williams' office for a conference. At this conference he advised plaintiff that he would conditionally recommend her for re-employment in her prior teacher's position. A letter to this effect was then handed plaintiff at this conference of April ninth or tenth. The letter was dated March 31, 1964.[7]

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[7]Letter dated March 31, 1964 from L. M. Williams, Principal, T. S. Inborden High School, Enfield, North Carolina, to Mrs. Willa C. Johnson, T. S. Inborden High School, Enfield, North Carolina, with carbon copies to W. H. Overman and R. L. Coppage, as follows:

"Dear Mrs. Johnson:

I have seen improvement in the areas mentioned in the letter of March 10, 1964. It is hopeful that improvement will continue.

It is now appropriate to digress from the discussion of the facts surrounding the situation within the school and examine the circumstances that appear in regard to all the other parties to this action.

Plaintiff is a member of a negro family of Enfield which has actively and vigorously championed the cause of negro rights. Her husband, Reed Johnson, ran for public office (State Senator) and obtained some newspaper coverage by newspapers of general circulation in the local area. Plaintiff's father and uncle also were active in civil rights movements and received some publicity in this respect.

All three of these men were leading negro members of the negro voters registration drive. But as to plaintiff's actual participation in demonstrations, picketing and marches, it does not appear in evidence that she actively participated to such an extent as to draw attention to herself in any individual and special capacity. She was not known to the press or public in general as were the other members of her immediate family.

Plaintiff was sympathetic toward the movement, however, and lent it her moral support; and she was probably vocal in her support. She did not, however, solicit active participation of her fellow teachers, nor did she openly involve herself in the direct action proceedings, although she stood on the sidelines and witnessed them.

She retained her status as a teacher during this turbulent period in the lives of the negro community. It was during this period that her family was involved in a federal civil rights action in this Court concerning registration of voters.

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I am recommending you for re-election for a teacher for the 1964-1965 school term on condition that you continue to show improvement in the areas mentioned in the letter dated March 10, providing that the District School Committee, Board of Education and the Superintendent approves of my recommendation.

Sincerely yours,"

(*Alston v. Butts*) It is obvious that a definite effect was had on plaintiff's general conduct and attitude during these times, as well it might have on anyone.

Plaintiff found it more difficult to get to school on time; she was not able and free to perform those extra-curricular activities which she had previously performed in prior years. Plaintiff was also now willing to speak up when she felt she was being unjustly criticized and she appeared to be extra sensitive to criticism, believing all references to shortcomings on the part of the teachers of Inborden School by its principal were directed at her.

In respect to plaintiff's testimony, it is noted that there are discrepancies between that which she indicates in her original affidavit and that which appears to be the facts as disclosed by plaintiff when she was examined orally in Court. Plaintiff has tended to minimize her professional transgressions while maximizing her notoriety as a known participant in the civil rights movement.

Other factors also appear which bear upon plaintiff's professional adjustment during this period of strife. Plaintiff was a devoted teacher, mother and housewife. These three demanding duties had absorbed her time in the preceding years of her teaching career, as well they would. Then, during this civil rights drive, an additional element was injected upon her time which was as equally demanding as the other two careers. Plaintiff now had the additional duty of trying to assist her husband, her father and her uncle all campaign for public office.

In addition, this campaign for elective office was part and parcel of the voters registration drive. It would be indeed difficult for her to take on these additional duties without finding it necessary to detract from some of the duties she had formerly performed.

Plaintiff's testimony reflects this conflict and indicates that her devotion to extra-curricular duties in her teaching profession could not help but suffer. At one point plaintiff ad-

mits being late for "game duty" because she had to prepare dinner for her family. At another time, she admitted being late for school in the morning due to the fact that an important house guest required her attention.

Principal Williams has testified that he was unaware of plaintiff's voter registration activities at the time he wrote the letters on March 10 and March 31. He must have known of her feelings and actions in relation to civil rights activities in general, however, because he attended many of the P.T.A. meetings which she attended and spoke with her about the quotation in the forward of the Teacher's Handbook, wherein it made reference to silence. In these conversations, plaintiff found much to arouse her ire.

Subsequent to principal Williams attending the P.T.A. meeting of early April 1964, he conditionally recommended plaintiff for re-employment as a teacher at Inborden High School. It is not difficult to conclude that this conditional recommendation was not made while he was exercising his free will and discretion. This fact becomes more apparent when it is noted that at no time has he been willing to give plaintiff his full endorsement. He does not criticize her as a teacher, but as a professional member of his staff. It is obvious that he considers plaintiff academically qualified. He also considers her highly competent as a classroom teacher,[8] but he appears to have serious doubts concerning her capacity to function effectively as a member of his professional staff. This attitude of principal Williams has been continuously manifested upon the record, and appears to be justified since the beginning of plaintiff's participation in civil rights activities. She has not been able to perform efficiently in all matters related to school activities. Plaintiff's difficulties appear, and principal Williams' inability to rectify, is evidenced by the letter of January 23, 1964,[9] March 10, 1964, and in the

[8]Plaintiff's Exhibit No. 4. Teacher's Recommendation Form dated June 7, 1963. See Appendix B.

[9]Letter dated January 23, 1964 from L. M. Williams, Principal, T. S. Inborden High School, Enfield, North Carolina, to Mrs. Willa C. Johnson, Inborden High School, Enfield, North Carolina, with a

letter of March 31, 1964, as well as in his affidavit, deposition and testimony. Principal Williams did not fully yield to the pressures exerted at the P.T.A. meeting of early April.

This Court is compelled to conclude that the members of school District Committee No. Five were also left with the impression that plaintiff was no longer able to fully perform her duties efficiently. This conclusion is apparent in the manner in which the members testified and in the answers propounded in their depositions.

Not one of the members of the Committee knew of her as an active civil rights participant. She does not appear to have been one. They did know of the activities her husband and father and uncle, and they do not appear to have associated the name of Reed Johnson with that of the teacher Willa Johnson.

All members of the Committee were greatly disturbed by the letter of March 10, as well they might be. One member felt it reflected insubordination on the part of plaintiff. They were also not satisfied that the letter of March 31 restored her to principal Williams' required standards of competency and efficiency. This is a reasonable conclusion when it is noted that there was only a conditional recommendation in the latter letter. Being dissatisfied with the March 31 letter, the members of the Committee questioned principal Williams

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carbon copy to Teacher's personal file, as follows:

"Dear Mrs. Johnson:

Each time your register has been check, you have been reminded that all entries were not in ink.

Part I of the METHOD OF KEEPING REGISTER, section one states, "The register is a permanent record which shall be kept posted to date and be convenient for inspection at any time. All entries must be neat, legible, accurate, and in ink".

The signing of your register has been marked void because the above has not been executed.

Very truly yours,"

closely on the matter. His answers were evasive and indirect. He stated he noted "some improvement" in "some areas." The impression left was one of resignation at best.

At this point the Committee determined to withhold any further decision until a later date, after they had time to further consider the matter. A meeting was then held some two weeks later, and at this meeting all the contracts recommended by principal Williams were accepted but plaintiff's. Plaintiff, of course, did not have an unqualified recommendation as did all others.

It is to be noted that at this later meeting where the actual vote was taken on the contract of plaintiff, there was one vote in favor of employing her and two against. This fact would tend to indicate someone was exercising a free will in the vote.[10]

## CONCLUSIONS OF LAW

The Court has serious doubts about whether a Federal jurisdictional issue has been raised. The North Carolina General Statutes (G.S. 115-72 and 115-142) have given the various school committees, superintendents of county and city schools, and boards of education of county and city ad-

[10]Defendant's Exhibit No. 1. Minutes of local School Committee, dated May 27 by Natalia J. Morrisette, Acting Secretary, as follows:

> "The local School Committee met May 27 with all members present except Mrs. Arnold. Jeff Whitehead was also present.
>
> A motion was made and seconded that contracts for teachers at Inborden High School be renewed, with the exception of Mrs. Willa C. Johnson. Failure to renew the contract was on the grounds of a letter from principal L. M. Williams written to Mrs. Johnson, with copies going to Sup't. Overman and chairman R. L. Coppage. This letter listed 7 complaints wherein she did not adhere to the policies and regulations of the school.
>
> The vote was 2 to 1. The meeting was adjourned.
>
> Respectfully,"

ministrative units the power to employ or not to employ public school teachers. There are no conditions or vested rights in regards to employment or re-employment of public school teachers, and the methods and reasons for employing or not employing a teacher would seem to be a local matter. For the federal courts to trespass on this local procedure would be to trespass on the discretion of those empowered with discretion. See *Brooks* v. *School District of the City of Moberly,* 267 F. 2d 733 (8th Cir., 1959); *Charters* v. *Shaffer,* 181 F. 2d 764 (3rd Cir., 1950); and *Hopkins* v. *Wasson,* 227 F. Supp 278 (E.D. Tenn., 1962).

To hold these public officials liable in legal proceedings when they are exercising their discretionary duties would be to place such a burden on them that it would become hazardous for them to so exercise that discretion with which they have been endowed by statute. A Court, therefore, should be extremely reluctant not to recognize immunity of a state or local official when he is in the process of so exercising his discretionary authority. See *Hoffman* v. *Halden,* 268 F. 2d 280 (9th Cir., 1959); and *Basista* v. *Weir,* 225 F. Supp 619 (W.D., Pa., 1964).

The complaint, however, insists that a conspiracy has been perpetrated by defendants in order to punish plaintiff for her acts whereby she exercised rights guaranteed her by the Federal Constitution and Acts of Congress. It is well recognized that the discretion of the defendants, in effectuating their hiring policies, does not extend to an arbitrary denial of these protected rights, when the denial is made under color of state law. *Garner* v. *Board of Public Works,* 341 U.S. 716 (1951); *Wieman* v. *Updegraff,* 344 U. S. 183 (1952); *Cohen* v. *Norris,* 300 F. 2d 24 (9th Cir., 1962); and *Lee* v. *Hodges,* 321 F. 2d 480 (4th Cir., 1963).

Because of these contentions of plaintiff, the Court has proceeded to examine plaintiff's allegations, in light of the record, pleadings, testimony, deposition, affidavits and exhibits (including newspaper articles), in order to weigh the evidence according to its credibility, and thereby conclude this matter on its merits.

The Court concludes: there has been a failure by plaintiff to show a conspiracy on the part of defendants when they failed to re-employ plaintiff for school year 1964-1965. See *Henry* v. *Coahoma County Board of Education,* ..... F. Supp ..... (N.D., Miss., 1963), 8 Race Relation L.R., No. 4, p. 1480; *United States* v. *Board of Education of Greene County, Mississippi, et al,* 332 F. 2d 40 (5th Cir., 1964); and *Goode* v. *Board of Education for the County of Summers,* ..... F. Supp ..... ( ), 8 Race Relations L.R., No. 4, p. 1485. The Court specifically finds that there was good cause for not re-employing the plaintiff under the circumstances as established by the evidence.

Plaintiff failed to observe the school rules as interpreted by her immediate supervisor and as published in the Teachers' Handbook. The rules and the interpretation of them was in no way unreasonable nor discriminatory, and it is not contended that they were. It is reasonable to infer that plaintiff's civil rights activities did have a bearing on her abilities to perform her duties, but not in the manner she contends in this action. The additional demands made on her time by the civil rights activities of 1963-1964 prevented her from devoting that usual amount of time which plaintiff normally devoted to her teaching profession, and in that respect one might conclude that she was not rehired due to her civil rights activities. This factual situation does not set up a conspiracy, and it certainly does not develop a parallel situation to that found in *Shelton* v. *Tucker,* 364 U.S. 479 (1960), the case which plaintiff so vigorously asserts.

Plaintiff's inability to perform those extra-curricular duties required of her promptly and in a cooperative manner gave the District Committee members ample cause to decide that she was not eligible for re-employment. It is clear that ability within the confines of the classroom is not the only criteria used in determining whether a teacher is the caliber employee desired in a school system. See *Adler* v. *Board of Education,* 342 U.S. 485 (1962); and *Beilan* v. *Board of Education,* 357 U.S. 399, 406 (1958).

In this respect it is appropriate to observe that if the Dis-

trict Committee had been aware of plaintiff's civil rights activities (and in weighing the evidence, it appears that this was most unlikely), it would have been entirely justified in not re-employing plaintiff when it appears that she was insubordinate and uncooperative with her immediate supervisor, principal Williams. If, in their opinion, she was participating in civil rights activities to such an extent as to interfere with her duties as a member of the Inborden High School staff, then there was legitimate grounds not to continue her contract. See *Hoffman* v. *Halden,* 268 F. 2d 280, supra; and *Parker* v. *Board of Education,* 237 F. Supp 222 (D., Md., 1965).

It is incumbent upon a court, when acting as the fact finder in a conspiracy action, to draw all rational inferences from the evidence. *Meredith* v. *Fair,* 305 F. 2d 343 (5th Cir., 1962). This duty is not a one-sided duty. The inferences may be drawn to find a conspiracy, but they may also be drawn to explain the conduct of defendants.

Because of plaintiff's contentions, the Court has been very liberal in admitting evidence and permitting testimony when its relevancy was in serious doubt. It has searched the record for evidence that would lead to an inference that defendants' actions were arbitrary and based on race; but it can only speculate on such matters, for the inferences, when drawn in light of the demeanor and credibility of witnesses, finds the inferences weigh heavily in favor of finding there was good cause not to renew the contract and to override the half-hearted and conditional recommendation of principal Williams. This is most apparent when it is realized by the Court that this conditional recommendation was extracted from him. That is what is meant by making a reasonable inference from the surrounding circumstances.

The plaintiff must do more than set forth facts showing a vague possibility of a conspiracy. She must, with some particularity, prove overt acts which defendants engaged in and that are reasonably related to the promotion of this claimed conspiracy. *Powell* v. *Workman's Compensation Board,* 327 F. 2d 131 (2nd Cir., 1964).

It is acknowledged that plaintiff need not prove the date and place of defendants' meetings and a summary of their conversation (*Hoffman* v. *Holder,* 268 F. 2d 280, supra), but when plaintiff's proof establishes a factual situation which would just as well justify defendants' conduct as to lead to an inference of conspiracy, then plaintiff has failed to carry her burden. The plaintiff had to show that the purpose or motivation behind the failure to re-employ her was to violate her protected rights. *Brotherhood of RR Train* v. *Central of Ga. Ry Co.*, 305 F. 2d 605 (5th Cir., 1962).

Plaintiff's evidence failed to present sufficient facts from which an inference, to the effect that defendants were depriving her of her constitutionally protected rights as alleged, could be drawn.

See *Joyce* v. *Ferrazzi,* 323 F. 2d 931 (1st Cir., 1963); and *Parker* v. *Board of Education,* 237 F. Supp 222, supra.

ORDER

Therefore, it is ORDERED that, upon a determination of the factual issues before the Court, this action being determined on its merits, defendants' motion to dismiss be, and the same is hereby granted.

It is further ORDERED that plaintiff's prayer for injunctive relief be, and the same is hereby denied.

It is further ORDERED that the Clerk serve a copy of this OPINION, ORDER and JUDGMENT upon all counsel of record.

It is further ORDERED that the Clerk serve a copy of the JUDGMENT upon all parties of record.

This the 11th day of June, 1965.

JOHN D. LARKINS, JR.
United States District Judge

Appendix A

Contract For Instructional Service

(For Use in County Administrative Units)

*STATE OF NORTH CAROLINA,*
*HALIFAX COUNTY*

THIS AGREEMENT entered into between the board of education of the Halifax County Administrative Unit and Willa C. Johnson, who now holds, or is entitled to hold, a North Carolina Secondary A Certificate, No. 408340, now in force, in accordance with the provisions of the school law applicable thereto, which are hereby made a part of this contract, WITNESSETH:

That said teacher or principal having been duly elected by the Public School Committee of V District in said administrative unit, agrees to teach in the school of said district for the school term 1963-1964 and to discharge faithfully all the duties imposed on teachers or principals by the Laws of North Carolina and the rules and regulations of the board of education of said administrative unit.

In consideration of this agreement, said board of education promises to pay the above-named person for services rendered during the life of this contract the sum to which he is entitled according to the State Salary Schedule from State funds plus the local supplement, if any, applicable thereto, subject to the allotment of teachers by the State Board of Education, and subject to the condition that the amount paid from State funds shall be within the allotment of funds made to said administrative unit for instructional salaries.

That said board of education has authorized, in a regular or in a called meeting, its Secretary to execute this contract when such employment is approved in accordance with the provisions of the public school law.

Special conditions: .....

.....

.....
.....
.....

Willa C. Johnson, Halifax County Board of Education, May 6, 1963. By W. Henry Overman, Secretary.

NOTE: This form should be used annually in the employment of teachers and principals. A copy of this contract should be kept on file in the office of the superintendent and a copy furnished the teacher.

Superintendent's Nomination of Principal
(For Use By Superintendent in Nominating Principal)

In compliance with school law, I, as superintendent of the schools of ..... County hereby nominate ..... for the position of principal of ..... school for the school term 19....-19....—unexpired part of the 19....-19.... school term (strike out one).
Date ....., 19..... Signed .....
Superintendent

Principal's Nomination
(For Use By Principal in Nominating Teacher)

In compliance with school law, I, as principal of the schools of the V District, hereby nominate Willa C. Johnson for the position of high school teacher in the schools of this district, for the school term 1963-1964.
Date 3-20, 1963. Signed: L. M. Williams, Principal.

Certification of Election
(For Use By School Committee in Certifying Election of Principal or Teacher)

THIS IS TO CERTIFY that Willa C. Johnson who now holds or is entitled to hold a North Carolina Secondary A Certificate, No. 408340, now in force, at a meeting of the Committee, held on April 23, 1963, was duly elected to teach in the schools of the V District, for the school term 1963-1964.
Date: April 23, 1963. .....District Committee
R. L. Coppage
Frances M. Arnold, Secretary

Approval of Superintendent
(For Use By Superintendent in Approving Election of Principal or Teacher: Execution of Contract on Reverse Side Constitutes Approval of Board of Education)

In compliance with school law, I hereby approve the election of the above-named person.
Date: April 23, 1963. W. Henry Overman, Superintendent

Contract For Instructional Service
(For Use in County Administrative Units)

*STATE OF NORTH CAROLINA*
*HALIFAX COUNTY*

THIS AGREEMENT entered into between the board of education of the Halifax County Administrative Unit and Willa C. Johnson, who now holds, or is entitled to hold, a North Carolina Secondary A Certificate, No. 408340, now in force, in accordance with the provisions of the school law applicable thereto, which are hereby made a part of this contract, WITNESSETH:

That said teacher or principal having been duly elected by the Public School Committee of V District in said administrative unit, agrees to teach in the school of said district for the school term 1964-1965 and to discharge faithfully all the duties imposed on teachers or principals by the Laws of North Carolina and the rules and regulations of the board of education of said administrative unit.

In consideration of this agreement, said board of education promises to pay the above-named person for services rendered during the life of this contract the sum to which he is entitled according to the State Salary Schedule from State funds plus the local supplement, if any, applicable thereto, subject to the allotment of teachers by the State Board of Education, and subject to the condition that the amount paid from State funds shall be within the allotment of funds made to said administrative unit for instructional salaries.

That said board of education has authorized, in a regular or in a called meeting, its Secretary to execute this contract when such employment is approved in accordance with the provisions of the public school law.

Special conditions: .....
.....
.....
.....
.....
..... Halifax County Board of Education
Teacher or Principal
....., 19..... By ....., Secretary

NOTE: This form should be used annually in the employment of teachers and principals. A copy of this contract should be kept on file in the office of the superintendent and a copy furnished the teacher.

Superintendent's Nomination of Principal

(For Use By Superintendent in Nominating Principal)

In compliance with school law, I, as superintendent of the schools of ..... County hereby nominate ..... for the position of principal of ..... school for the school term 19....-19....—unexpired part of the 19....-19.... school term (strike out one).
Date ....., 19..... Signed .....
Superintendent

Principal's Nomination

(For Use By Principal in Nominating Teacher)

In compliance with school law, I, as principal of the schools of the V District, hereby nominate Willa C. Johnson for the position of High School teacher in the schools of this district, for the school term 1964-1965.
Date: March 26, 1964. Signed: L. M. Williams, Principal

Certification of Election

(For Use By School Committee in Certifying Election of Principal or Teacher)

This Is To Certify that Willa C. Johnson who now holds or is entitled to hold a North Carolina Secondary A Certificate, No. 408340, now in force, at a meeting of the Committee, held on ....., 19...., was duly elected to teach in the schools of the V District, for the school term 1964-1965.
Date: ....., 19..... ..... District Committee

.....

.....

Secretary

Approval of Superintendent

(For Use By Superintendent in Approving Election of Principal or Teacher: Execution of Contract on Reverse Side Constitutes Approval of Board of Education)

In compliance with school law, I hereby approve the election of the above-named person.
Date: ....., 19..... .....

Superintendent

Appendix B

TEACHER RECOMMENDATION FORM

Halifax County Schools
Halifax, N. C.

TEACHER: Willa C. Johnson Grade: HS
SCHOOL: Inborden SCHOOL YEAR: 1962-1963
Rating Scale: 5 = Excellent
4 = Above average
3 = Average
2 = Below average
1 = Poor
0 = Failure

Place the appropriate number in the space provided.

I. PERSONAL QUALITIES

5 Character
5 Appearance
5 Health
5 Initiative
5 Enthusiasm

5 Self-Control
5 Tact
5 Voice
5 Personality

II. SOCIAL AND PROFESSIONAL QUALITIES
4 Understanding of Children
4 Cooperation and Loyalty
4 Professional Interest and Growth
5 Use of English
5 Scholarship

III. SCHOOL FULFILLMENT
4 Discipline
4 Interest in Physical Welfare of Pupils, Playground Activities, etc.
4 Care of Room
4 Business Routine, etc.

IV. TECHNIQUE OF TEACHING
5 Daily Preparation
5 Skill in Motivating Work
4 Attention to Individual Needs

V. RESULTS
4 Attentive and Responsive Class
4 Moral Influence
4 General Development of Pupils

VI. For what position is the applicant best suited?
1. .....
2. .....
3. .....

VII.
1. Careful of conduct in and out of school? 4
2. Any peculiarities either physical or mental? None
3. Give strongest point as teacher:
.....
.....
4. Give weakest point as teacher:
.....
.....
5. This evaluation is based on .... hours of supervision.

VIII. COMMENTS:

Date: June 7, 1963 PRINCIPAL: L. M. Williams

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

NO. 884 — CIVIL

WILLA JOHNSON, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated,

Plaintiffs

—v—

JOSEPH BRANCH, individually and as attorney for the Board of Education of Halifax County, North Carolina, and H. HENRY OVERMAN, individually and as Superintendent of Schools of Halifax County, North Carolina, and ROM PARKER, individually and as County Attorney for Halifax County, North Carolina, and L. M. WILLIAMS, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, and C. M. MOORE, JR., MRS. J. C. SHEARIN, HENRY L. HARRISON, MRS. V. I. MOHORN, SR., C. H. LEGGETT, MRS. ROBERT ROBINSON and J. D. WHITEHEAD, individually and as members of the Board of Education of Halifax County, North Carolina, and R. L. COPPAGE, PERCY F. THORN, MRS. WILLIS M. MORISETTE, MRS. FRANCES ARNOLD and E. W. COPELAND, individually and as members of the District School Committee of District V, Halifax County, North Carolina

Defendants

JUDGMENT

The above entitled action came on for trial before the Court without a jury, the plaintiff appearing in person and by her attorney, and the defendants appearing by their attorneys, and testimony having been offered and briefs filed by both parties as well as by amicus curiae, and depositions, affidavits and exhibits having been offered, and the Court having filed its Findings of Fact and Conclusions of Law, now, pursuant to its memorandum OPINION and ORDER, it is hereby

ORDERED and ADJUDGED, pursuant thereto, that plaintiff take nothing of defendants by this action, that the permanent injunction prayed for be denied, and plaintiff go without day. That defendants' motion to dismiss be, and same is hereby granted.

It is further ORDERED and ADJUDGED that the plaintiff pay the costs of these proceedings to be taxed by the Clerk of this Court, and that execution issue for same.

This the 11th day of June, 1965.

JOHN D. LAWKINS, JR.
United States District Judge

# Appendix B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 10,281.

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Willa Johnson, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated,
Appellant,
*versus*
Joseph Branch, individually and as attorney for the Board of Education of Halifax County, North Carolina, and H. Henry Overman, individually and as Superintendent of Schools of Halifax County, North Carolina, and Rom Parker, individually and as County Attorney for Halifax County, North Carolina, and L. M. Williams, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, and C. M. Moore, Jr., Mrs. J. C. Shearin, Henry L. Harrison, Mrs. V. I. Mohorn, Sr., C. H. Leggett, Mrs. Robert Robinson and J. D. Whitehead, individually and as members of the Board of Education of Halifax County, North Carolina, and R. L. Coppage, Percy F. Thorn, Mrs. Willis M. Morisette, Mrs. Frances Arnold and E. W. Copeland, individually and as members of the District School Committee of District V, Halifax County, North Carolina,
Apellees.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AT WILSON. JOHN D. LARKINS, JR., DISTRICT JUDGE.

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(Argued April 7, 1966. Decided June 6, 1966.)

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Before HAYNSWORTH, Chief Judge, and SOBELOFF, BOREMAN, BRYAN and J. SPENCER BELL, Circuit Judges.

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William M. Kunstler and Philip J. Hirschkop (Kunstler, Kunstler & Kinoy; Lainof, Cohen & Cohen, Samuel S. Mitchell and Prof. Chester J. Antieau on brief) for Appellants, and Richard B. Allsbrook (Julian R. Allsbrook, and Allsbrook, Benton, Knott, Allsbrook and Cranford on brief) for Appellees.

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J. SPENCER BELL, Circuit Judge:

This is an appeal from a judgment of the district court dismissing with prejudice the plaintiff's complaint seeking reversal of the action of her school committee which refused to renew her contract of employment as a teacher. She contends that the committee acted either in an arbitrary and capricious manner or acted to penalize her for exercising her constitutional rights. Jurisdiction is based upon Title 28 U.S.C. 1343(3), Title 42 U.S.C. 1971, 1981, 1983 and 1985, and the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

The record discloses, the defendants concede, and the court found that the plaintiff, a Negro, was a well qualified, conscientious, and competent teacher of English at the T. S.

Inborden High School in the town of Enfield, North Carolina, for a period of nearly twelve years preceding the incidents involved here. In addition to her teaching duties she had done a great deal of "extracurricular" work for the school and for student activities which indicated her devotion to her professional task. During the year 1962-1963 the Principal graded her in all fields as excellent and above average, the two highest possible ratings used in the system of grading teachers by the Halifax school system. Her superintendent, a defendant, testified that she had been an above average teacher and was doing very satisfactory work.

Beginning in the month of April 1963, the town of Enfield became a focal point of civil rights activity which included a voter registration drive, the candidacy of a number of Negroes for public offices, a major federal voting suit, an attempt to use the public library by Negro high school students, and the picketing of places of public accommodation. The local theatre closed, and mass convictions for picketing at a local restaurant were finally reversed by the Supreme Court. *Blow* v. *North Carolina,* 379 U. S. 684 (1965). The plaintiff was a participant in one of the demonstrations and in the voter registration and voting activity. Both her husband and her father were candidates for public office. Her uncle brought suit in the federal district court in an effort to secure the Negroes an adequate opportunity to register.

The civil rights movement in Enfield became increasingly active and controversial during the summer and fall of 1963 and continued into the winter of 1964. It had not terminated at the time that teaching contracts came up for renewal at the April 23, 1964, meeting of the District School Committee. In March, Mrs. Johnson received from her Principal, L. M. Williams, a letter dated March 10, 1964, listing seven infractions of the school rules which he asked her to correct. The plaintiff offered expert evidence to show, and the district court in its comments appeared to agree, that these infractions individually and collectively were not in themselves justification for failure to re-employ the plaintiff. None of them involved the quality of her classroom work. Instead

they covered such matters as being 15 minutes late to supervise an evening athletic contest; arriving at the school building a few minutes after the prescribed sign-in time but before any class was due to commence; failure to furnish a written explanation for not attending a P.T.A. meeting; failure to stand in the door of her classroom to supervise pupils as the classes changed, and failure to see that the cabinets in her home room were clean and free of fire hazard. To all of these, the plaintiff offered explanations, and early in April the plaintiff received a letter dated March 31, 1964, in which the Principal informed her that he had seen improvement "in the areas mentioned" in the letter of March 10th. The letter continued "I am recommending you for re-election for a teacher for the 1964-1965 school term on condition that you continue to show improvement. . . ." Prior to the meeting of the District School Board in April, Principal Williams did in fact sign the plaintiff's contract, thus complying with the state's legal requirement that he recommend her before the Committee could act on her contract. The record discloses that the former pleasant relationship between Mrs. Johnson and the Principal, Williams, became strained over the period of her civil rights activities. The plaintiff contends that Williams was opposed to such activity on the part of school teachers and exhibited his hostility by criticizing her. She concedes that she took offense at his actions. However, she insisted that at no time were their relations such that they interfered with her official duties, and Williams also conceded that he could not specify a single infringement of the rules after the warning of March 10th. In any event, his testimony confirmed his statement of March 31st that she had improved and that he had recommended extending her contract for another year.

The District Committee met on April 23, 1964, to consider renewal of teacher contracts. In attendance were County Superintendent Overman, Principal Williams, Committee Chairman Coppage, and members Thorne, Copeland, Mrs. Arnold and Mrs. Morisette. All the members of the school committee knew of the civil rights activity in general and of the participation of Mr. Johnson, the plaintiff's husband,

therein, though they denied specific knowledge of the plaintiff's part or of her relationship as wife to the Mr. Johnson who was running for the State Senate from that district. At this meeting all the committee members (except the Chairman, Coppage, who had received copies) first became aware of the two letters to Mrs. Johnson. In their testimony before the court they all declared that their decision was based solely on the letters. Superintendent Overman testified that at the meeting Williams renewed his favorable recommendation of March 31st. None of the members was able to testify to any inquiry into further details made at the meeting. All action on teacher contracts was postponed until a meeting on May 27, 1964. During the interval no further investigation was made by any member of the committee of Mrs. Johnson's conduct. The meeting on May 27th was attended by the Chairman and three members of the committee. Present also was a member of the County School Board who had previously told Mrs. Johnson's husband that a teacher would be fired for voting activity. The members voted 2 to 1 against renewing Mrs. Johnson's contract. There was no discussion of her conduct. The two members who voted against renewal conceded frankly that they were opposed to integration of the schools. On June 2nd, the Principal told Mrs. Johnson that her contract had not been renewed because of insubordination to him. The district court, after reviewing the record, found that ". . . there was good cause for not reemploying the plaintiff under the circumstances as established by the evidence" because of the "plaintiff's inability to perform those extracurricular duties required of her promptly and in a cooperative manner. . . ." We hold that the court committed clear error in this finding, but before discussing the facts we turn to the law of the case.

The law of North Carolina is clear on the procedure for hiring teachers. All contracts are for one year only, renewable at the discretion of the school authorities. A contract must be signed by the Principal as an indication of his recommendation and then transmitted to the District School Committee, whose business it is either to approve or disapprove in their discretion. (N.C.G.S. 115-72). There is no

vested right to public employment. No one questions the fact that the plaintiff had neither a contract nor a constitutional right to have her contract renewed, but these questions are not involved in this case. It is the plaintiff's contention that her contract was not renewed for reasons which were either capricious and arbitrary or in order to retaliate against her for exercising her constitutional right to protest racial discrimination.

The Supreme Court has recently had occasion to consider the law in this and analogous areas. It has pointed out on numerous occasions the importance of the teaching profession in our democratic society and the necessity of protecting its personal, associational and academic liberty. "Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always be free to inquire, to study and to evaluate. . . ." *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957); *Barenblatt* v. *United States*, 360 U.S. 109 (1959); *Wieman* v. *Updegraff*, 344 U.S. 183 (1952); *Adler* v. *Bd. of Education*, 342 U.S. 485 (1952).

In *Shelton* v. *Tucker*, 364 U.S. 479 (1960), the Court struck down an Arkansas statute which required teachers to list every organization to which they belonged or contributed as violative of the due process clause of the Fourteenth Amendment. In that case, as here, the School Board had refused to renew a teacher's contract at the end of the school year. The Court said:

> "Such interference with personal freedom is conspicuously accented when the teacher serves at the absolute will of those to whom disclosure must be made —those who can any year terminate the teacher's employment without bringing charges, without notice, without a hearing, without affording an opportunity to explain. . . . Public exposure, bringing with it the possibility of public pressure upon school boards to discharge teachers who belong to unpopular or minority organizations, would simply operate to widen and aggravate the impairment of conditional liberty." (At 486-87.)

We take it to be beyond cavil that the state may not force the plaintiff to choose between exercising her legitimate constitutional rights and her right of equality of opportunity to hold public employment. In *Alston* v. *School Board of City of Norfolk*, 112 F.2d 992 (4 Cir. 1940), cert. denied, 311 U.S. 663 (1940), this court struck down a practice of paying lesser salaries to Negro school teachers. In that case Chief Judge Parker said:

> "It is no answer to this to say that hiring of any teacher is a matter resting in discretion of the school authorities. Plaintiffs, as teachers qualified and subject to employment by the state, are entitled to apply for the positions and to have the discretion of the authorities exercised lawfully and without unconstitutional discrimination as to the rate of pay to be awarded them, if their applications are accepted.
>
> * * *
>
> ". . . If a state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties imbedded in the Constitution of the United States may thus be manipulated out of existence." [Citing and quoting Frost Trucking Co. v. Railroad Comm., 271 U.S. 583, 594] (at 996-97).

Again in *Franklin* v. *County School Board of Giles County*, __ F.2d __ (4 Cir. 1966), this court ordered that Negro teachers whose contracts were not renewed because of their race be reinstated. There the Board contended that they had, in the act of failure to renew the contracts, compared the qualifications of the teachers with others in the system and found them inferior, but the record disclosed no objective evidence of such inferiority in the face of equal certification and experience. However wide the discretion of School Boards, it cannot be exercised so as to arbitrarily deprive persons of their constitutional rights. *Zimmerman* v. *Board of Education*, 183 A.2d 25, 27-28 (N.J. 1962); *Garner* v. *Board of*

*Public Works,* 341 U.S. 716, 725 (1951). The principle has often been applied in analogous situations. *Torcaso* v. *Watkins,* 367 U.S. 488 (1961); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232 (1957). In *Konigsberg* v. *State Bar of California,* 353 U.S. 252 (1957), the Court said:

> "We recognize the importance of leaving the States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association." (At 273.)

This principle has been upheld by the Supreme Court of North Carolina in cases involving school teachers. *Cf. Cody* v. *Barrett,* 156 S.E. 146 (1930); *Harris* v. *Board of Education of Vance County,* 4 S.E.2d 328 (1939). Having explicated the principles of law involved, we now turn to the facts.

While there is some ambiguity in the court's findings and conclusions, we think it a fair summary to say that the court found that the plaintiff's civil rights activities consumed so much of her time and interest that they interfered with her "extracurricular" activities at the school; created some dissension between her and the Principal, and caused the Board's refusal to renew her contract. This independent finding of the court is irrelevant because it is not the reason advanced by the Board members for refusing to execute her contract. The statute gives discretion to the school board in deciding whether or not to continue the employment of a teacher. Discretion means the exercise of judgment, not bias or capriciousness. Thus it must be based upon fact and supported by reasoned analysis. In testing the decision of the school board the district court must consider only the facts and logic relied upon by the board itself. It is "a simple but fundamental rule of administrative law . . . that a reviewing court in dealing with a determination of judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or im-

proper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis. To do so would propel the court into the domain which Congress has set aside for the administrative agency." *SEC* v. *Chenery Corp.*, 332 U.S. 194, 196 (1947). Similarly the district court may not usurp the discretionary power of the school board but must judge the constitutionality of its action on the basis of the facts which were before the Board and on its logic. The testimony of all the members of the Board was that they did not know of the plaintiff's civil rights activities, or at least the extent therof, and that their action was based solely upon the letters of March 10th and March 31st. We accept the defendant's statements that they were not aware of the extent of the plaintiff's personal participation in this activity because the district court credited them. Thus the record offers no objectively substantiated facts known to the Board with regard to the plaintiff's civil rights activity which would justify the Board's action as found by the court. Additionally the finding of the district court as to cause for cessation of employment is clearly in error because it is not supported by the record.

That the plaintiff had her disagreements with her Principal is obvious from the record. In such periods of great emotional stress there is no more reason to expect the Negro community to be unanimous than to expect the white to be so. But that these disagreements had been satisfactorily settled by March 31st in such a manner as not to interfere with her school work was shown both by the Principal's letter of that date and by his testimony. He testified that the plaintiff had improved in her attitude toward him and that she had not violated any of the rules since the warning of March 10th. Furthermore, the members of the Board testified that they had not further questioned the Principal and that they acted solely on the strength of the letters and their personal opinions that the Principal did not want the plaintiff's contract renewed. Thus there is no support in the record for the court's finding that the extent of the plaintiff's activities interfered with her school work or that the Principal and the plaintiff had not reached a satisfactory understanding of

their differences. We take it to be self-evident that the objections held either by the Board or the Principal to the plaintiff's exercise of her personal and associational liberty to express her feelings about segregation would not justify refusal to renew her contract so long as these activities did not interfere with her performance of her school work. We feel that the infractions enumerated in the March 10th letter were neither individually nor collectively such as to justify failure to renew the contract of a teacher with the plaintiff's record of twelve years. The district court did not seek to rely on these infractions to support the dismissal. These being the only basis for the school board's decision, we find that the action of the school board was arbitrary and capricious.

We, with the district court, accept the defendants' statements that they did not know of the extent of the plaintiff's activities for civil rights but they knew of her attitude towards the civil rights movement. She made no secret of it. The Principal forced her to cancel an invitation to a local civil rights leader to talk to the students in her lecture course, even though he was not to talk about civil rights (she acceded to this order). Mr. Copeland, the member who moved not to renew her contract, was a member of the Town Council which rejected an equal accommodations ordinance strenuously backed by both Mrs. Johnson and her husband several weeks before the April meeting. Three days before the meeting, Mr. Coppage pointed out the plaintiff's husband to his fellow board member Thorne at the polling place.

In this factual context we think the court committed error in separately weighing the facts with respect to the plaintiff's two contentions: first, that the Board either acted arbitrarily or capriciously, or second, that it acted to penalize her for her civil rights activity. In weighing the reasons offered by the Board to support its contention that it did not act arbitrarily, we cannot ignore the highly charged emotional background of a small eastern North Carolina community in the throes of a civil rights campaign where more than 51% of the population was Negro and where the two members of the Board who voted against the plaintiff confessed to knowledge

of her husband's activity and their opposition to school desegregation. To accept such an analysis we would have to pretend not to know as judges what we know as men. It is apparent on this record that absent the racial question, the issue would not have arisen. The only reasonable inference which may be drawn from the failure to renew Mrs. Johnson's contract in the face of her splendid record of twelve years on such trivial charges was the Board members' objections to her racial activity. We cannot weigh the separate contentions in airtight compartments.

For these reasons the order of the district court is reversed and the case remanded with instructions to enter an order directing the Board to renew her contract for the next school year (1966-1967) and to determine her damages.

*Reversed and Remanded.*

ALBERT V. BRYAN, Circuit Judge, dissenting:

I would affirm. The primary infirmity of the majority opinion is its determinative premise: that the District Court was limited to a consideration of only those facts or reasons which the School Committee stated were the basis for its administrative determination not to renew appellant-plaintiff's contract—that the Court could make no other findings of facts, or give any other reasons for its decision upholding the Committee's action, even on definitive proof of the existence of such other facts and reasons. I would affirm because the findings of the District Court, rightfully made, securely support its conclusion that the Committee's action was warranted and not race-inspired.

I. This suit cannot be equated, as the majority does, with a statutory review of a decision of an administrative body. That was the frame of the case, SEC v. Chenery Corp., 332 US 194 (1947), now cited by the majority as precedent for its postulate that the trial court was confined to the facts and reasons which the Committee relied on for its decision. But this rule does not obtain in a general equity suit such as the

present action. This is an original suit seeking to redress deprivation of civil rights. Even in the predicate statute it is designated as a "suit in equity".[1] The variety of relief prayed also manifests its character as a common chancery cause. It seeks: (1) an injunction against interference with the plaintiff and her class in the exercise of their rights; (2) a mandatory injunction requiring defendants to renew plaintiff's contract; (3) recovery of damages, special and exemplary; and (4) the award of counsel fees.

While the complaint pleaded an attack upon a State administrative decision, it was not an "appeal" from it. Indeed, to repeat, the complaint does not purport to be confined to a "review" of the decision. In these circumstances, Burford v. Sun Oil Co., 319 US 315, 317 (1943) explained that such a case is "a simple proceeding in equity". See, too, Chicago, R.I. & P. R.R. v. Stude, 346 US 574, 581 (1954).

To decree the asserted liabilities against the defendants without reference to all the facts and circumstances is, for me, not only an astounding but an alarming denial of due process. It must be remembered that in making its decision the Committee was not required to, and did not, give any facts or grounds for its determination. The majority rejects the reason stated by the District Judge for *his* decision "because it is not the reason advanced by the Board members for refusing to execute her contract". "In testing the decision of the school board", we are told, "the district court must consider only the facts and logic relied upon by the board itself". Obviously, the opinion is referring to the reasons, facts and logic which the Committeemen said at the trial were the foundation of their determination. Consequently, the holding of the opinion amounts to this: even if there were in truth other reasons, facts and logic which justified the defendants' decision, but at trial the school authorities did not specify them as grounds relied on at the time of their decision, the District Court could not now look to them to see if the defendants' action was on the whole right, and wheth-

[1] 42 USC 1983, 1985.

er they should be subjected to the other prayers of the complaint.

This is strange doctrine. If one performing legislative or administrative duties states in a suit against him that he acted only on certain facts or logic, which later appear to be wrong, inadequate or unsound, but in actuality a sound basis for this action appears in the evidence, I have never understood that he could not defend on that ground. This is so whether the additional facts were unknown or known but not recalled by him. Indeed, the other circumstances might even render moot the question whether the defendant was justified in acting on the facts and logic which he did employ. If his decision is ultimately proved right and just, error in reaching it does not fault the decision.

I have never known a defendant to be so strait-jacketed in his defense, or while so bound to be cast in damages, as by the decree the majority now issues. I think it legally impermissible.

II. From all the evidence before him, which I think the District Judge was free to consider, and from all his findings and conclusions, which I think he was by law free to make, it clearly appears that this is not a color case. The judge carefully and candidly explored this accusation. The facts discovered expose its baselessness and the plaintiff's neglect of her duties as the real ground for the School Committee's refusal to renew the appellant-plaintiff's contract. If the burden is on the defendants, they have fully acquitted themselves of race motivation. The insinuation of race into the decision is unfortunate and unwarranted.

I cannot agree with the majority's conclusion that the District Judge thought, or that it is true, that the offenses enumerated in the principal's letter of March 10, 1964 neither individually nor collectively justified the Committee's resolution. To begin with, the complaints of the principal, himself a Negro, in this letter were not trivia or isolated instances. They were repeated derelictions in school rules. While reg-

ulations of this kind may seem miniscule to adult ex-students, they fill a definite need in the coordination of faculty responsibilities to both the school and the children. Disobedient teachers cannot be trusted to command obedience from the pupils. Furthermore, the principal's letter was not only a remonstrance in itself; it was also a reminder of previous admonitions. One of these—failure to report to work on time—had been the subject of a conference between the principal and plaintiff in January 1964. The District Judge found that the plaintiff's disregard of the principal's requirements "occurred with a greater frequency than indicated by this letter" and "there were indeed many clashes over violations".

The majority is mistaken that "a fair summary" of the District Court's finding is "that the plaintiff's rights activities consumed so much of her time and interest that they interfered with her 'extracurricular' activities at the school; created some dissension between her and her Principal, and caused the Board's refusal to renew her contract". Its inaccuracy will appear from the recital of the findings to follow. But if this summary is correct, it emphasizes the plaintiff's neglect. After-hours duties of a teacher are as important as those she is expected to fulfill during school time. Political participation did not excuse her, just as it would not justify other employees' absenteeism.

Neglect of her primary and curricular duties was explicitly specified by the District Judge:

> "While plaintiff was attempting to use the school in this way [furtherance of the 'negro voter registration drive'], principal Williams was noting a definite change in her personality and conduct. *He noted violations of standards of teacher conduct which he testified were almost daily in frequency.* He admonished her directly by conferences with her, and indirectly by calling various regulations and statements in the Teacher's Handbook to her attention.
>
> "Plaintiff finally came to believe that every admoni-

tion given at a teacher's meeting was directly aimed at her alone. She then *ceased to approach principal Williams on school projects,* but would send one of her students to him in her stead.

"Defendant Williams, in turn, noted more violations and found that *she tried to circumvent regulations* rather than obey his instructions; she tended to quibble with him about their interpretation. This becomes especially apparent on the question of lateness at the opening of the school day.

"Plaintiff insisted that she did not have to be in her room at 8:00 A.M., but only at the 'sign in' registry. Principal Williams felt otherwise and instructed plaintiff accordingly. A clash over this matter resulted;

"It further developed that plaintiff would make *false* entries on the 'sign in' register in order to avoid the appearance of being at school later than 8:00 A.M." (Accent added.)

The majority opinion sees all of this nullified by the principal's letter of March 31, 1964 to the plaintiff. True, it noted her improvement since his letter of March 10, and stated his intention to recommend her reemployment for the 1964-65 school term *"on condition* that you continue to show improvement" and "providing that the District School Committee, Board of Education and the Superintendent approves of my recommendations". (Accent added.) In fact he did recommended her. But the Committee, aware of it all, declined to accept his recommendation.

This was its right—a discretion and determination entrusted to the Committee by the State of North Carolina. An administrative decision is not invalid because the court disagrees with it. Nor, as the majority opinion stresses, can a court, trial or appellate, substitute its discretion or judgment for the Committtee's. The Committee's action stands until proved, on a balance of all the testimony, to rest on

no evidence, on bias or on illegality. No illegality is suggested and abundant testimony underlies the District Court's findings of justification.

Because of the findings of fact rightfully and warrantably made by the District Court, I think the orders on appeal should be affirmed.

JUDGMENT

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

No. 10,281.

Willa Johnson, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated,

Appellant,

vs.

Joseph Branch, individually and as attorney for the Board of Education of Halifax County, North Carolina, and H. Henry Overman, individually and as Superintendent of Schools of Halifax County, North Carolina, and Rom Parker, individually and as County Attorney for Halifax County, North Carolina, and L. M. Williams, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, et al.,

Appellees.

*Appeal from the United District Court for the — Eastern — District of — North Carolina.*

This cause *came on to be on the record from the United States District Court for the* — Eastern — *District of* — North Carolina, — *and was argued by counsel.*

*On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby,* reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Eastern District of North Carolina, at Wilson, for further proceedings consistent with the opinion of the Court filed herein.

J. Spencer Bell
United States Circuit Judge.

# Appendix C

## *THE FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED*

The pertinent text of the federal constitutional provisions involved is as follows:

### AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### AMENDMENT V

No person shall . . . be deprived of life, liberty, or property, without due process of law; . . .

### AMENDMENT XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

### AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws.

* * *

AMENDMENT XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

*THE FEDERAL STATUTES INVOLVED*

The pertinent text of the federal statutes involved is as follows:

TITLE 28 U.S.C. SECTION 1343

Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

* * *

TITLE 42 U.S.C. SECTION 1971

Voting rights—etc.

(a) (1) All citizens of the United States who are other-

wise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * *

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

* * *

TITLE 42 U.S.C. SECTION 1981

Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. § 1977.

## TITLE 42 U.S.C. SECTION 1983

### Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

## TITLE 42 U.S.C. SECTION 1985

### Depriving persons of rights or privileges

(3) . . .; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980.

## TITLE 28 U.S.C. RULE 52 (a)

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting

or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. . . .

## *THE NORTH CAROLINA STATUTES INVOLVED*

The text of the North Carolina statutes involved is as follows:

### GENERAL STATUTES OF NORTH CAROLINA, CHAPTER 115, SECTION 72

*How to employ principals, teachers, janitors and maids.*— The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of the district shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. Likewise, upon the recommendation of the principal of each school of the district, the district committee shall appoint janitors and maids for the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. No election of a principal or teacher, or appointment of a janitor or maid, shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under eighteen years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and the county superintendent are unable to agree upon the nomination and election of a principal or the principal and the district committee

are unable to agree upon the nomination and election of teachers or appointment of janitors or maids, the county board of education shall select the principal and teachers and appoint janitors and maids, which selection and appointment shall be final.

The distribution of the teachers and janitors among the several schools of the district shall be subject to the approval of the county board of education. (1955, c. 1372, art. 7, s. 4.)

## GENERAL STATUTES OF NORTH CAROLINA, CHAPTER 115, SECTION 142

*Contracts of principals and teachers terminated at end of 1954-1955 term; employment thereafter.*—(a) The contracts of all principals and teachers now employed in the public schools of North Carolina are hereby terminated as of the end of the school term 1954-1955. County and city superintendents shall give each principal and teacher notice by mail of the termination of his contract, but the failure to give such notice shall not have the effect of continuing in force the contract of any principal or teacher beyond the end of the 1954-1955 school term.

(b) Any teacher or principal desiring election as teacher or principal in a particular administrative unit shall file his or her application in writing with the county or city superintendent of such unit. The application shall state the name and number of the certificate held, when the certificate expires, experience in teaching, if any, and the administrative unit in which the applicant last taught. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers and principals before any salary vouchers shall be paid. The contracts of teachers and principals shall be made for the next succeeding school year or for the unexpired part of a current school year. No county or city board of education shall enter into a contract for the employment of more teach-

ers, including vocational teachers, than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such teachers from local funds. All contracts shall be subject to the condition that when the position for which any principal or teacher is employed is terminated the contract is likewise terminated. (1955, c. 664.)

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# Supreme Court of the United States

October Term, 1966

No. 719

JOSEPH BRANCH, etc., et al.,
Petitioners,

v.

WILLA JOHNSON, etc., et al.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

## BRIEF OF THE ATTORNEY GENERAL OF NORTH CAROLINA AMICUS CURIAE

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# Supreme Court of the United States

**October Term, 1966**

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**No. . . . . .**

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**JOSEPH BRANCH, etc., et al.,**

**Petitioners,**

**v.**

**WILLA JOHNSON, etc., et al.,**

**Respondent.**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.**

---

## BRIEF OF THE ATTORNEY GENERAL OF NORTH CAROLINA AMICUS CURIAE

### INTEREST OF THE STATE OF NORTH CAROLINA

The State of North Carolina operates 169 school administrative units which are under the administration of county and city boards of education. There is a statutory system for the employment of all employees of the public school system, including teachers. The pertinent North Carolina statutes on this subject are set out in Footnote 2 of the Order of the District Court, which appears in 242 F. Supp. 721, and on p.1198 of 10 Race Relations L. R., No. 3. This public school system is provided for under Article I, Section 27, and Article IX, of the Constitution of North Carolina, as implemented by Chapter 115 of the General Statutes of North Carolina, as amended. Public school teachers under the North Carolina statute are employed for a school year only and at the end of the school year the contract time has expired, and the contract is terminated. The employing authorities may or may

not reemploy the teacher according to their judgment and discretion.

It is important, therefore, for the State of North Carolina to know whether or not it has a legal and constitutional right to enter into contracts according to this statutory plan and whether or not, after the contract has expired and terminated, the Federal Courts can compel the boards of education to enter into contracts of reemployment of a teacher irrespective of whether they wish to do so or not, or, in other words, do we have a new contractual legal system whereby the courts can compel the parties to enter into a contract or to make a new contract by order of court irrespective of the wishes of the parties? The Court will see, therefore, that this question reaches into the whole contractual system of the public schools of the State. The school authorities of North Carolina need to know if they will be subjected to litigation every time they fail to employ a public school teacher and such knowledge is essential irrespective of groups or races.

## OPINION BELOW

The Opinion of the District Court of the United States for the Eastern District of North Carolina is reported in 242 F. Supp. 721.

## QUESTIONS PRESENTED

1. Do the findings of fact and the order entered thereon, by the District Court, meet the clearly erroneous test required by the Federal Rules of Civil Procedure (Fed. Rules Civ. Proc. Rule 52(a), 28 USCA Cumulative Annual Pocket Part 1965)?

2. Do the Petitioners, School Committee and School Board, have a constitutional right to reemploy a teacher or not, as they choose, after the exipration of a teacher's yearly contract?

3. Has the Respondent produced sufficient evidence to

meet the burden of proof required for a showing of violation of her civil rights?

4. Does the arbitrary and capricious rule or concept apply to a situation where a teacher's yearly contract has expired and where she is complaining of a failure to reemploy?

5. What specific civil rights of the Respondent were violated in this case?

6. Does the complaint allege a cause of action showing any specific violation of civil rights of the Respondent?

## ARGUMENT

### I

### THE PETITIONERS HAVE A RIGHT TO MAKE THEIR OWN SELECTION OF TEACHERS AND THIS IS ESPECIALLY TRUE WHERE A CONTRACT HAS EXPIRED, AND THE COURT DOES NOT HAVE A RIGHT TO COMPEL THE PETITIONERS TO MAKE A CONTRACT WITH ANY ONE TEACHER.

As heretofore stated, North Carolina employs its teachers by yearly contracts, and it is insisted by the State of North Carolina that when a contract expires it may elect to reemploy a teacher or not. The primary and gross error of the Circuit Court of Appeals consists in the fact that the Circuit Court treated the situation as if the Respondent had been removed from her teaching position for cause during the life of her contract and while it was still in force. A casual reading of the record will show that this is not true.

We do not think that the Circuit Court has a right to compel the Petitioners to make a contract with the Respondent and that this attempt to do so is a violation of the constitutional rights of the Petitioners. Contracts are made voluntarily and upon a meeting of the minds. Up to this time they have not been forced or compelled by judicial fiat.

In 16 Am. Jur 2d (Constitutional Law) p. 704, sec. 373, the Author says:

> "Although the term 'freedom of contract' does not appear in the Constitution, the right to enter into a contract, with some exceptions, is a liberty which falls within the protection of the due process clause of the Fourteenth and Fifth Amendments of the Constitution of the United States. It is also safeguarded by the Constitutions of the States, and by a constitutional guaranty of pursuit of happiness. * * * Liberty of contract involves, as one of its essential attributes, the right to terminate contracts, subject only to civil liability for unwarranted termination. * * * The United States Supreme Court has stated that freedom to contract is the essence of freedom from undue restraint on the right to contract. Other courts have stated that the liberty to make a contract includes the corresponding right to refuse to accept a contract or to assume such liability as may be proposed.
>
> "The right of liberty of contract is inherent and inalienable. It belongs to every citizen by the law of the land; every man has the right freely to deal, or to refuse to deal, with his fellowmen."

On the right to terminate contracts, see Footnote 5 on p. 706 of 16 Am. Jur. 2nd. This being true neither the Legislature nor the Court can force anyone to make another contract after the original contract is terminated. For example: In STEPHENS v. HICKS, 156 N. C. 239, the Supreme Court of North Carolina says:

> "Parties are entitled to contract according to their free will. They make contracts for themselves and not by legislative compulsion. The freedom of the right to contract has been universally considered as guaranteed to every citizen."

And the Supreme Court of North Carolina again says at the top of p. 245, in the same case, the following:

> "It may do many things with reference to contracts, but it cannot make a contract between parties, because a contract implies volition and the agreement of two or more minds to one and the same thing; in other words, consent. The Legislature can no more make a contract for parties without their consent than it can take away a vested right or impair the obligation of a contract already made."

If it is true that the Legislature cannot force persons to make contracts, it is also true that the courts will not compel parties to make contracts against their will (MONROSA v. CARBON BLACK EXPORT, INC., 359 U. S. 180, 3 L. ed. 2d 723, 79 S. Ct. 710; MEMPHIS & L. R. R. CO. v. SOUTHERN EXPORT, 117 U. S. 1, 29 L. ed. 791, 6 S. Ct. 542.

In MEMPHIS & L. R. R. CO. v. SOUTHERN EXPORT, supra, this Court said:

> "The contracts were all in writing, in which the rights of the respective parties were clearly defined, and there is now no dispute about what they were. Each contract contained a provision for its termination by either party on notice. That notice has been given in all the cases by the Railroad Companies, and the express companies now sue for relief. Clearly this cannot be afforded by keeping the contracts in force, for both parties have agreed that they may be terminated at any time by either party on notice; *nor by making new contracts, because that is not within the scope of judicial power.*" (Emphasis ours)

In the Case of SHELTON v. Tucker, 364 U. S. 479, 81 Ct. 247, 5 L. ed. 2d 231, this Court declared unconstitutional certain Arkansas statutes requiring teacher personnel and others to submit an affidavit listing all the organizations to which each one belonged at the time or had belonged to in the last five years. There were also other provisions which made it unlawful to employ a member of the NAACP. It is quite evident that Arkansas wanted to employ these people but was prohibited by the statute in many cases from so

doing. The 3-Judge Court, on the question of employing a person after the contract had expired, said:

> "It does not follow that this Court, as a court of equity, can compel any school board to hire a person as a teacher, or to retain him in its employment, or to forbid it to discharge him. This is true because of a well settled principle that an equity court, at least in the absence of a statute or of a situation where an employee has a vested right to or interest in his employment, will not interfere by injunction with the power of an employer to determine whom he will employ or retain in his employment. As we have seen, school teachers in Arkansas have no vested rights in their jobs, and no right of reinstatement if wrongfully discharged. If a teacher is discharged in violation of his contract, his remedy is an action for damages."

This Court recognized the right of Arkansas to terminate employment and commented:

> "Such interference with personal freedom is conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made—those who any year may terminate the teacher's employment without bringing charges, without notice, without a hearing, without affording an opportunity to explain."

## II

## THE CIRCUIT COURT DID NOT GIVE ANY EFFECT TO THE FINDINGS OF FACT MADE BY THE DISTRICT JUDGE NOR TO THE RULE THAT SUCH FINDINGS OF FACT SHOULD NOT BE SET ASIDE UNLESS CLEARLY ERRONEOUS, AND DUE REGARD AS TO THE OPPORTUNITY OF THE TRIAL COURT TO JUDGE THE CREDIBILITY OF THE WITNESSES.

A reading of the record will show that none of the Petitioners knew anything about the Respondent's civil rights activities. Another colored teacher who engaged in demonstra-

tions was reprimanded by the Superintendent but not because of demonstrations or civil rights activities but because of the scanty clothes she wore while demonstrating. This teacher was reemployed, and, in fact, the Respondent was reemployed for the preceding year at which time she had been engaged in civil rights activities. If the Court will take the time to go through the record it will see that the District Judge is correct when he said (242 F. Supp. 721, 729):

> "Not one of the members of the Committee knew of her as an active civil rights participant. She does not appear to have been one. They did know the activities of her husband and father and uncle, and they do not appear to have associated the name of Reed Johnson with that of the teacher Willa Johnson."

The Court further found (p. 731) that if the Committee had known of the civil rights activities of Respondent the Committee would have been entirely justified in not reemploying her, it having been made to appear that she was insubordinate and uncooperative with her immediate supervisor, Principal Williams. The truth of the matter, as is plainly shown by the evidence of the colored Principal, the Respondent continually violated rules and regulations and this colored Principal had put up with her as long as he could; his patience was exhausted. The Respondent has invoked the civil rights statutes in an effort to take revenge on the School Committee.

It is provided by Rule 52 of the Federal Rules of Civil Procedure (28 USCA, Rule 52—1965 Cumulative Annual Pocket Part) that: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

We do not wish to belabor the point but the Trial Judge had an opportunity to see the demeanor of all witnesses, and certainly there is substantial evidence to support every finding of the District Court. A heavy burden is imposed on those who seek to demonstrate that findings of fact of a trial court

are clearly erroneous (BELLEVUE GARDENS, INC., v. HILL, 297 F. 2d 185—1961). Certainly it must be clearly shown that findings are without adequate evidentiary support in the record or were induced by an erroneous view of the law (CEDILLO v. STANDARD OIL CO. OF TEXAS, 291 F. 2d 246, cert. den 368 U. S. 955). It is also true that a court of appeals will not substitute its judgment for that of trial court where the fact finding process is involved (MONROE AUTO EQUIPMENT CO. v. SUPERIOR INDUSTRIES, INC., 332 F. 2d 473, cert. den. 379 U.S. 901—1964).

While it is true that findings cannot be based on speculation and conjecture, nevertheless, findings as to intent, motive, purpose or design are not to be tried de novo but such findings are to be reviewed by the same standards supplied in reviewing other facts (UNITED STATES v. BOARD OF EDUCATION OF GREENE COUNTY, MISS., 332 F. 2d 40 - 1964).

It is also said in substance that an appellate court should take the view of the evidence tending to support the findings and conclusions of the trial court in a case tried without a jury in the same manner as it would consider such evidence as tending to support the verdict of a jury (MINNESOTA AMUSEMENT CO. v. LARKIN, 299 F. 2d 142 - 1962).

## III

## THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION

The Court will see that the Complaint alleges everything in conclusional form without alleging what constitutional rights have been violated because the contract of the Respondent was not renewed. It does not allege what State law under the color of which the Petitioners acted. We are not told the custom or policy of the Petitioners that resulted in an invasion of Respondent's rights. We are not told what acts of the Petitioners were arbitrary, capricious and malicious. Respondent alleges that she was not again employed because of a plan, agreement and conspiracy entered into by

the Petitioners but we do not know the primary phases of the conspiracy and plan or what Petitioners entered into the plan, nor are we told the contents of this scheme or plan. The pleadings do not tell us what overt acts were committed as a result of the conspiracy and with a design to carry out and consummate the objectives of the conspiracy.

The matter of loose and broad language and allegations in the form of generalities has been dealt with many times by the circuit courts: POWELL v. WORKMEN'S COMPENSATION BOARD OF NEW YORK, CA-2, 327 F. 2d 131, 137; McGUIRE v. TODD, CA-5, 198 F. 2d 60, 63; SNOWDEN v. HUGHES, 321 U. S. 1, 88 L. ed. 497, 64 S. Ct. 397.

## IV

## THE RESPONDENT HAS NOT BEEN DEPRIVED OF ANY EQUAL RIGHTS, EQUAL PROTECTION OF THE LAW OR PRIVILEGES AND IMMUNITIES PROTECTED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES.

The privileges and immunities guaranteed by the Constitution are set forth in the Slaughter-house Cases, 16 Wall. (U. S.) 36, 74, 79, 21 L. ed. 394, 408, 409. It is quite clear that none of the allegations of the Respondent fall within the purview of 42 USCA 1985, and for this, see the Case of WALKER v. BANK OF AMERICA, CA-9, 268 F. 2d 16, 24. And, as will be seen from the various cases, the right of employment in its redress is within the domain of the State (FERRER v. FRONTON EXHIBITION CO., CA-5, 188 F. 2d 954; LOVE v. CHANDLER, CA-8, 124 F. 2d 785; CHARTER v. SHAFFER, CA-3, 181 F. 2d 765; BROOKS v. SCHOOL DISTRICT OF CITY OF MOBERLY, CA-8, 267 F. 2d 733.

## V

## THE ARBITRARY AND CAPRICIOUS RULE WOULD NOT APPLY WHERE A CONTRACT HAS BEEN TERMINATED AND AN OFFICIAL

BOARD HAS DISCRETION IN RENEWING THE SAME.

As we have pointed out before, the Respondent's contract had terminated and we again emphasize that she was not removed from employment during the term or life of any contract. School officials in performing their duties are not liable for mere errors of judgment and have a qualified immunity from suits under the Civil Rights Statutes. This is pointed out by Chief Judge John J. Parker of the Fourth Circuit in the Case of PAPAGIANKIS v. THE SAMOS, 186 F. 2d 257. The District Court in this case lays down the same rule citing BROOKS v. SCHOOL DISTRICT OF THE CITY OF MOBERLY, 267 F. 2d 733; CHARTER v. SHAFFER, 181 F. 2d 764; HOPKINS v. WASSON, 227 F. Supp. 278, and see also HOFFMAN v. HALDEN, 268 F. 2d 280; NORTON v. McSHANE, 332 F. 2d 855, Footnote 9.

In the Case of PAPAGIANKIS v. THE SAMOS, CA-4, 186 F. 2d 257, Chief Judge John J. Parker, of the Fourth Circuit, considered this question, and said:

> "In exercising the functions of his office the head of an executive department, keeping within the limits of his authority, should not be under an apprehension that the motives that control his official conduct may at any time become the subject of inquiry in a civil suit for damages. It would seriously cripple the power and effective administration of public affairs as entrusted to the executive branch of the government, if he were subjected to any such restraint. * * * But if he acts, having authority, his conduct cannot be made the foundation of a suit against him personally for damages, even if the circumstances show that he is not disagreeably impressed by the fact that his action injuriously affects the claims of particular individuals."

There are many cases on this subject, and we refer the Court to the cases hereinafter cited, as showing that discretionary officials cannot be punished when they act within

the powers of a statute in discretionary matters, as follows: COBB v CITY OF MALDEN, CA-1, 202 F. 2d 701, p. 706; NELSON v. KNOX, CA-6, 256 F. 2d 312; THOMPSON v. BAKER, 133 F. Supp. 247; NORTON v. McSHANE, CA-5, 332 F. 2d 855, footnote 9; KOCH v. ZUIEBACK, 194 F. Supp. 651; EGAN v. CITY OF AURORA, 291 F. 2d 706; HOFFMAN v. HALDEN, 268 F. 2d 280; BROOKS v. MOBERLY, 267 F. 2d 733, 739.

## VI

## THE RESPONDENT NEVER DID PRODUCE SUFFICIENT EVIDENCE TO MEET THE REQUIRED BURDEN OF PROOF.

It is not enough for the Plaintiff to allege in a conclusional manner a deprivation of civil rights then say she is entitled to judgment. This is supported by several of the federal cases (ACKER v. SCHULTE, 74 F. Supp. 683; MITCHELL v. WRIGHT, 69 F. Supp. 698; BOXRUD v. RONNING MACHINE CO., 164 F. 2d 996; MIDDLETOWN TRUST CO. v. BREGMAN, 174 A. 67 - Conn.).

The same rule prevails in the jurisdiction of the State of North Carolina (JOHNSON v. JOHNSON, 229 N. C. 541; KNIGHT v. THE ASSOCIATED TRANSPORT, INC., 257 N. C. 758).

The presumption of discrimination as set forth in the cases dealing with discrimination in the organization of grand juries do not apply in this case, and the presumption that arises in the jury cases only arises after certain definite facts are shown. A discriminatory purpose is not presumed (TARRANCE v. FLORIDA, 188 U. S. 519, 520, 47 L. ed. 572, 573, 23 S. Ct 402).

For cases in which Respondent has failed to meet the burden of proof, see: BROOKS v. SCHOOL DISTRICT OF MOBERLY, 267 F. 2d 733; 740; MORRIS v. WILLIAMS, 59 F. Supp. 508; U. S. v. TARUMINZ, 242 F. 2d 191, 193; BARISTA v. WEIR, 225 F. Supp. 619).

## VII

## THE OPINION OF THE CIRCUIT COURT OF APPEALS IS CONTRARY TO THE CASES IN THE OTHER CIRCUITS DEALING WITH SIMILAR REEMPLOYMENT SITUATIONS.

We do not believe that Respondent has cited a single case dealing with a reemployment situation that supports her position. On the contrary, the Petitioners are supported by several cases on the subject, some of which are cited by the District Court in its Opinion in this case, such as: HENRY v. COAHOMA COUNTY BOARD OF EDUCATION, 8 Race Relations L. R. No. 4, p. 1480; UNITED STATES v. BOARD OF EDUCATION OF GREEN COUNTY, MISS., 332 F. 2d 40; GOODE v. BOARD OF EDUCATION FOR THE COUNTY OF SUMMERS, 8 Race Relations L. R., No. 4, p. 1485.

In addition to the cases cited by the District Court, there are other cases which support the view of the Defendants, as follows: FRANKLIN, et al. v. COUNTY SCHOOL BOARD OF GILES COUNTY, 10 Race Relations L. R., No. 2, p. 735; PARKER v. BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, 348 F. 2d 464, 237 F. Supp. 222 (Fourth Circuit); BUFORD v. MORGANTON CITY BOARD OF EDUCATION, 244 F. Supp. 437; BARON v. O'SULLIVAN, 258 F. 2d 336; STARLING v. BOARD OF EDUCATION FOR COUNTY OF MINGO, 175 F. Supp. 703; MORRIS v. WILLIAMS, 59 F. Supp. 508; CHAMBERS v. HENDERSONVILLE CITY BOARD OF EDUCATION, 245 F. Supp. 759.

## CONCLUSION

The decision of the Circuit Court of Appeals utterly disrupts the contract system for teachers in the public schools. Under that decision Petitioners are compelled to make a contract, and may we ask for how long and for what period of time are we compelled to make this contract? Are

the Petitioners supposed to retain the services of the Respondent for the rest of her natural life? The Court does not say or give us any guide on this subject. Do we now have a new system of federal judicial tenure although we have never enacted a tenure system by our own statutes? Is the County Attorney to be held in this case although he had nothing to do with the school business whatsoever? These and many other questions are presented by this decision which did not follow the findings of fact of the District Judge. To support the decision of the Circuit Court of Appeals for the Fourth Circuit destroys the right of contract.

Respectfully submitted

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

No. 719

JOSEPH BRANCH, individually and as attorney for the Board of Education of Halifax County, North Carolina, and W. HENRY OVERMAN, individually and as Superintendent of Schools of Halifax County, North Carolina, and ROM PARKER, individually and as County Attorney for Halifax County, North Carolina, and L. M. WILLIAMS, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, and C. M. MOORE, JR., MRS. J. C. SHEARN, HENRY L. HARRISON, MRS. V. I. MOHORN, SR., C. H. LEGGETT, MRS. ROBERT ROBINSON and J. D. WHITEHEAD, individually and as members of the Board of Education of Halifax County, North Carolina, and R. L. COPPAGE, PERCY F. THORNE, MRS. WILLIS M. MORRISETTE, MRS. FRANCES ARNOLD and E. W. COPELAND, individually and as members of the District School Committee of District V, Halifax County, North Carolina, *Petitioners*

v.

WILLA JOHNSON, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated, *Respondent*

**On Petition for Writ of Certiorari To the United States Court of Appeals for the Fourth Circuit**

## BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

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No. 719

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JOSEPH BRANCH, individually and as attorney for the Board of Education of Halifax County, North Carolina, and W. HENRY OVERMAN, individually and as Superintendent of Schools of Halifax County, North Carolina, and ROM PARKER, individually and as County Attorney for Halifax County, North Carolina, and L. M. WILLIAMS, individually and as Principal of T. S. Inborden High School, Halifax County, North Carolina, and C. M. MOORE, JR., MRS. J. C. SHEARIN, HENRY L. HARRISON, MRS. V. I. MOHORN, SR., C. H. LEGGETT, MRS. ROBERT ROBINSON and J. D. WHITEHEAD, individually and as members of the Board of Education of Halifax County, North Carolina, and R. L. COPPAGE, PERCY F. THORNE, MRS. WILLIS M. MORRISETTE, MRS. FRANCES ARNOLD and E. W. COPELAND, individually and as members of the District School Committee of District V, Halifax County, North Carolina,

*Petitioners*

v.

WILLA JOHNSON, individually and as a representative of a class composed of herself and other Negro school teachers of Halifax County, North Carolina, similarly situated, and as a representative of a class composed of herself and other Negro citizens of Halifax County, North Carolina, similarly situated,

*Respondent*

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**On Petition for Writ of Certiorari To the United States Court of Appeals for the Fourth Circuit**

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## BRIEF FOR RESPONDENT IN OPPOSITION

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TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

## OPINIONS BELOW

The opinion of the District Court (App. A of Petition) is reported at 242 F. Supp. 721. The opinion of the Court of Appeals for the Fourth Circuit, and the dissenting opinion (App. B of Petition) are reported at 364 F. 2d 177.

## JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

## QUESTIONS PRESENTED

The briefs of the petitioner and of the Amicus Curiae pose four basic questions:

1. Did the Court of Appeals consider matters not in evidence?

2. Did the Court of Appeals find clear error as required by Rule 52(a) of the Federal Rules of Civil Procedure?

3. Did the Court of Appeals decide this matter in conflict with its own prior decisions?

4. Is this decision in conflict with similar rulings of the Court of Appeals for the Fifth Circuit.

## STATEMENT

Respondent accepts the statement of petitioners with regard to all dates and the sequence of happenings. However, she strongly disputes petitioners' statement

as to her record as a teacher, the resolution of any conflict she allegedly had with her principal, the actions of District School Committee No. 5 in considering her employment, and the District School Committee's knowledge of her close association with the civil rights struggle.

Respondent was an exemplary teacher. She was rated as an overall excellent teacher by her own principal. The superintendent of schools similarly regarded her. She was uncommonly competent in her classroom endeavors and extremely active in school extracurricular activities. On March 10, 1964 the principal wrote her concerning seven minor infractions, such as being fifteen minutes late for game duty one night, having an unkempt closet, etc. On March 31, 1964 the principal wrote respondent that he would recommend her for re-employment contingent upon her improvement. He subsequently did sign her contract without any qualification and in fact, she did not commit even a minor infraction after March 10, 1964.

At the time that respondent's contract was subject to renewal, this small town was caught in the turmoil of racial conflict. Major civil rights suits were being litigated, demonstrations were in progress and Negroes declared their candidacy for various local and state offices. The leaders of this whole movement were respondent, her husband, her father and her uncle. This was a well publicized fact known to the petitioners. In fact, respondent's husband was a well-publicized candidate for high state office, opposing petitioners' counsel, Julian R. Allsbrook. Amid this turmoil, School District Committee No. 5 failed to renew respondent's contract without any investigation or in-

quiry of the superintendent, respondent's official record, or even the school principal. This action was taken at an extraordinary meeting of the district committee, with the unexplained presence of a member of the county school board, after a member of the county board had threatened respondent's husband at a polling place that a teacher would be fired.

## ARGUMENT

### I. The Opinion of the Court of Appeals Is Based Upon Facts Which Are Fully Supported By the Record

Petitioners' allegations that numerous factual conclusions of the Court of Appeals are not supported by the record are clearly erroneous. That section of petitioners' brief is nothing but a rehashing of their Petition for Rehearing below. Respondent is fully prepared, should this Court so desire, to substantiate every material point, stated in the opinion of the Court of Appeals, by proper reference to the record.

The petitioners clearly knew of respondent's civil rights involvement. Petitioner Williams testified that he knew of respondent's attitude regarding civil rights activities in Enfield. (Appellees' appendix below, hereinafter referred to as D—, at 39). Petitioner Thorne admitted knowing of respondent's husband's civil rights activities. (Appellant's appendix below, hereinafter referred to as P—, at 93). Petitioner Coppage similarly knew of the civil rights activities of respondent's family (P. 95) and in fact singled out respondent's husband to petitioner Thorne at a polling place. (P. 121). One of the petitioners even approached respondent's husband at a polling place and threatened that a teacher would be fired. (P. 21). The above cite but a few of the many instances in the record concerning petitioners' knowledge of respond-

ent's involvement with civil rights as fully set forth in appellant's brief below.

Nor is there merit in petitioners' contention that the Court of Appeals could not reach conclusions on the size, racial proportions, racial atmosphere, actions of the town council, etc. of Enfield, North Carolina. Not only is the record replete with facts to support these conclusions but the Court of Appeals could take judicial notice of all these matters which were fully matters of public record. The court certainly knew of two other major civil rights suits arising in Enfield, *Blow* v. *North Carolina*, 379 U.S. 684 (1965) (a case resulting from mass picketing) and *Alston* v. *Butts*, 9 Race Rel. L. Rep. 1356 (E.D. N.C. 1964) (a successful voter registration suit in which members of respondent's family were plaintiffs).

Petitioners further maintain that the Court of Appeals erred in concluding that petitioners only considered the infractions of the letter of March 10, 1966, in not rehiring respondent. Respondent discussed this at length in the appellant's brief below. The testimony of the Committee members conclusively supports the opinion of the Court of Appeals in this matter. (P. 87, 93-95, 116, 118-120, 122).

In the interest of brevity respondent has only cited a few instances above. Respondent respectfully submits that this Court should not accept petitioners' unfounded assertions concerning the factual findings of the Court of Appeals for the Fourth Circuit sitting *en banc* without a detailed examination of the complete record in this matter and the briefs below which discuss these matters at length.

**II. The Court of Appeals Found Clear Error As Required By Rule 52(a) of the Federal Rules of Civil Procedure**

Rule 52(a) provides that findings of fact by a district judge may not be set aside unless clearly erroneous. A finding is clearly erroneous ". . . when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364, 394-95 (1948). See *Mothner* v. *Ozark Real Estate Co.*, 300 F. 2d 617 (8th Cir. 1962); *Western Casualty and Surety Co.* v. *Herman*, 318 F. 2d 50, 56 (8th Cir. 1963); *United States* v. *Beard*, 260 F. 2d 81 (9th Cir. 1958), *cert. denied*, 358 U.S. 874, rehearing denied, 358 U.S. 913.

The Fourth Circuit, sitting *en banc*, with only one judge dissenting (not on this issue), stated twice in its opinion that the District Court's findings were clearly erroneous. (364 F. 2d at 179, 181)

The petitioners testified only briefly during the final hearing. A much greater part of their evidence was in the form of depositions, affidavits, and memoranda. In reviewing this evidence, the Court of Appeals had no less opportunity than the trial judge to observe witnesses. See *United States ex rel Binion* v. *O'Brien*, 273 F. 2d 495 (3rd Cir. 1960). Additionally, incorrect conclusions drawn from facts not in dispute are clearly erroneous, and the appellate court had authority to correct them. *Kuhn* v. *Princess Lida of Thurn and Taxis*, 119 F. 2d 704 (3rd Cir. 1941). Moreover, where, as here, constitutional issues of moment emerge from mixed findings of fact and law, the authority of an appellate court to take an independent view of the whole record is plain. Indeed, this Court has taken such a view even in cases coming from the state courts,

over which the Supreme Court does not have a general supervisory power analogous to that of the Court of Appeals over the District Court. See, *e.g.*, *Edwards* v. *South Carolina*, 372 U.S. 229 (1963); *Haynes* v. *Washington*, 373 U.S. 503 (1963); *Cox* v. *Louisiana*, 379 U.S. 536 (1965); *Holt* v. *Virginia*, 381 U.S. 131 (1965).

Many tests of what is "clearly erroneous" have been considered and applied. An appellate court may reverse when it is convinced by examination of the entire record that a mistake has been committed. *United States* v. *Beard*, *supra*. An appellate court may reverse when it has a conviction that an injustice has been done. *Campbell* v. *Barsky*, 265 F. 2d 463 (5th Cir. 1959). An appellate court may reverse when there is a misapprehension of the evidence by the District Court and its decision is so clearly erroneous that it is against the truth and right of the case. The Court of Appeals may give effect to its own conclusions. *Special Service Co.* v. *Delaney*, 172 F. 2d 16 (5th Cir. 1949). An appellate court may reverse when the findings of fact are against the clear weight of evidence. *Maple Island Farm, Inc.* v. *Bitterling*, 209 F. 2d 867 (8th Cir. 1954), *cert. denied*, 348 U.S. 882, *rehearing denied*, 348 U.S. 921.

In reversing the opinion of the District Court in the instant case, it is readily apparent that the Court of Appeals for the Fourth Circuit was convinced by examination of the entire record that a mistake had been made, that the decision of the District Court was against the truth and right of the case, that an injustice had been done, and that the District Court's decision was against the clear weight of the evidence. Having a definite and firm conviction that a mistake had been committed, the Court of Appeals properly reversed.

### III. The Court of Appeals for the Fourth Circuit Is Not In Conflict With Its Own Prior Decisions

Petitioner and Amicus contend that the instant decision is in conflict with the prior holding of this Court of Appeals in *Parker* v. *Board of Education of Prince George's County,* 348 F. 2d 464 (4th Cir. 1965). To the contrary, there is no conflict in this circuit and this Court of Appeals has a long-standing line of decisions supporting this case. As long ago as 1940 this circuit held:

> As teachers holding certificates from the State, plaintiffs have acquired a professional status. It is true that they are not entitled by reason of that fact alone to contracts to teach in the public schools of the state; for whether any particular one of them shall be employed to teach is a matter resting in the sound discretion of the school authorities; but . . . they are qualified school teachers and have the civil right, as such, to pursue their profession without being subjected to discriminatory legislation on account of race or color. *It is no answer to this to say that the hiring of any teacher is a matter resting in the discretion of the school authorities.* Plaintiffs, as teachers qualified and subject to employment by the state, are entitled to apply for the positions and to have the discretion of the authorities exercised lawfully and without unconstitutional discrimination as to the rate of pay to be awarded them, if their applications are accepted. (emphasis added) *Alston* v. *School Board of City of Norfolk,* 112 F. 2d 992, 996-97 (4th Cir. 1940).

Those principles have been adhered to not only in the instant case, but also recently by this circuit in the major cases of *Franklin* v. *County School Board of Giles County,* 360 F. 2d 325 (4th Cir. 1966) and *Cham-*

*bers* v. *Hendersonville City Board of Education,* 364 F. 2d 189 (4th Cir. 1966). Nor does the *Parker* case, *supra;* in any way contravene these principles. *Parker* is clearly distinguishable from these other decisions of this circuit. Parker was a first year teacher whose "engagement was simply probationary. . . ." 384 F. 2d at 465. Relying upon this fact, the Court of Appeals affirmed the District Court decision upon "the failure of the complaint to state a claim upon which relief could be granted." *Id.* at 465.

**IV. This Decision Is Not In Conflict With Similar Rulings of the Court of Appeals for the Fifth Circuit**

Petitioner and Amicus both contend that the instant decision has produced a conflict between this circuit and rulings in two factually similar cases in the Court of Appeals for the Fifth Circuit. Respondent not only submits that there is no conflict between the circuits but indeed, even if there was, there are abundant decisions by this Court on the legal issues herein which should resolve any conflict.

The briefs of the petitioner and Amicus rely on the cases of *United States* v. *Board of Education of Greene County, Mississippi,* 332 F. 2d 40 (5th Cir. 1964) and *Henry* v. *Coahoma County Board of Education,* 353 F. 2d 648 (5th Cir. 1965) to buttress their arguments. Accepting the findings of the District Courts *arguendo* in each of these cases, they do not in any way contravene the line of law in this area as enunciated by this Court or the fourth circuit in the instant decision or its other decisions, *supra.* The Greene County and Henry cases, *supra* were distinquishable on their factual findings. Indeed, this Court refused to grant a writ of certiorari in the *Henry* case, U.S. , 16 L. Ed. 674 (1966).

While the *Henry* case involved failure to renew a contract for a teacher with considerable experience, it was affirmed by the fifth circuit on the basis that (a) the plaintiff had failed to carry her burden of proof and (b) that the plaintiff should not be allowed to amend her complaint pursuant to Rule 15(b) of the Federal Rules of Civil Procedure to conform to defendants' evidence at the time of trial. If there are any questions of law in *Henry* bearing upon the instant case, they are in Judge Brown's concurring opinion where he states that if Mrs. Henry's dismissal was in violation of her constitutional rights, then that court would enjoin her failure to be re-employed. Such was the ruling herein.

In the *Greene County* case, supra, the fifth circuit merely held in a brief opinion that the plaintiff was only a new teacher, 332 F. 2d at 44, and that it failed to find clear error in the District Court's opinion and accordingly adopted that opinion. The *Greene County* case is in complete accord with the fourth circuit's holding in *Parker* v. *Board of Education of Prince George's County, Maryland, supra.* There also a probationary (new teacher) was allegedly dismissed for cause and the Court of Appeals affirmed upon "failure of the complaint to state a claim upon which relief could be granted. . . ." 348 F. 2d at 464.

Certainly, neither the instant decision nor any of the above decisions are in conflict with the great body of law of this Court as set forth in, *e.g., Shelton* v. *Tucker,* 364 U.S. 479 (1960); *Wieman* v. *Updegraff,* 344 U.S. 183 (1952); *Sweezy* v. *New Hampshire,* 354 U.S. 234 (1957). Similarly, the instant decision is in accord with numerous decisions of other circuits, *e.g.,*

*Bomar* v. *Keyes,* 162 F. 2d 136 (2nd Cir. 1947); *Morris* v. *Williams,* 149 F. 2d 703 (8th Cir. 1945).

This Court has always encouraged vigilance where the rights and academic freedom of teachers are at stake. The fourth circuit has followed such a principle in this case. As this Court has stated:

> [W]hen academic teaching-freedom and its corollary learning-freedom, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion . . . into this constitutionally protected domain. Barenblatt v. United States, 360 U.S. 109, 112 (1959).

## CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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